

SECTION 007200 - GENERAL CONDITIONS

TABLE OF CONTENTS

<b>PART 1 GENERAL</b>	<b>1</b>
1.01 ORGANIZATION, CONVENTIONS, ABBREVIATIONS, AND DEFINITIONS	1
A. Organization of Specifications	1
1.02 CONVENTIONS	1
A. Conventions Used Throughout the Specifications Include	1
1.03 DEFINITIONS	4
A. As Used in the Contract Documents	4
1.04 ABBREVIATIONS	25
A. General	25
1.05 INSTRUCTIONS REGARDING PROPOSING	36
A. Examination of Contract, Site of Work, and Subsurface Data	36
B. Establishment of the Guaranteed Maximum Price	38
C. Interpretation of Quantities in Schedule of Values	44
D. Subservice Investigations and Data	45
E. Assignment of Claim Relief	44
F. Non-Collusion Affidavit	45
1.06 AWARD AND EXECUTION OF THE CONTRACT	45
A. Award of Contract	45
B. Restrictions on Commencement of Work	46
1.07 SCOPE OF WORK	47
A. Purpose of Contract	47
B. Communications Regarding the Work	48
C. Owner-Required Changes in the Work	48
D. Differing Site Conditions	49
E. Environmental Pollution Changes and Natural Resource Preservation	50
F. Changed or Extra Work	50
G. Cost Reduction Proposals	51
1.08 ELECTRONIC DATA	54
1.09 CONTROL OF WORK	54
A. Authority of the Owner's Representative	54
B. Authority and Duties for Inspectors	55
C. Coordination of Specifications and Plans; As-Built Drawings	56
D. Construction Stakes, Lines and Grades	58
E. Inspection	59
F. Special Inspections and Independent Inspections	60
G. Delivery of Notices	60
H. Cooperation and Superintendence by the Contractor	61
I. Relationship of the Parties	63
J. Materials and Equipment	65
K. Utilities	64
L. Coordination with Others	68
M. Cooperation with Other Contractors	68
N. Connections to Public Water System	69
O. Construction Equipment Restrictions	69
P. Removal of Unacceptable and Unauthorized Work	70
Q. Use of Work During Construction	71
R. Furnishing Temporary Services and Facilities	73
S. Final Project Cleanup	73
T. Maintenance Warranties and Guarantees	73

U.	Responsibility for Materials and Workmanship .....	74
1.10	SOURCE OF MATERIALS .....	76
A.	Construction Products List .....	76
B.	Potable Water System Materials .....	76
C.	Owner Furnished Materials .....	77
1.10	QUALITY OF MATERIALS .....	77
A.	General .....	77
B.	Rejected Materials .....	77
C.	Certifications and Materials Conformance Documents .....	77
D.	Testing by Owner .....	78
E.	Cost of Testing .....	78
F.	Materials Acceptance Guides .....	78
G.	Materials Specifications and Test Method References .....	79
H.	Field Tested Materials .....	80
I.	Nonfield-Tested Materials .....	81
J.	Use of Materials Without Acceptable Materials Conformance Documents .....	82
K.	Storage and Handling of Materials .....	83
L.	Relationships to Submittals .....	83
M.	Fabrication Inspection Expense .....	83
1.12	LEGAL RELATIONS AND RESPONSIBILITIES .....	84
A.	General .....	84
B.	Other Agencies Affecting Owner Contracts .....	85
C.	Permits, Licenses, and Taxes .....	88
D.	Rights-of-Way, Easements, and Premises .....	89
E.	Patents, Copyrights, and Trademarks .....	89
F.	Safety, Health, and Sanitation Provisions .....	89
G.	Independent Contractor Status .....	94
H.	Indemnity/Hold Harmless .....	94
I.	Employee Drug Testing Program .....	96
J.	Assignment of Claim Relief .....	96
K.	Conflict of Interest .....	96
L.	Third Party Beneficiary .....	96
M.	Responsibility for Damage to Work .....	96
N.	Responsibility for Damage to Property and Facilities .....	98
O.	Responsibility for Defective Work .....	100
P.	Trespass .....	102
Q.	Use of Explosives .....	102
R.	Overtime Work .....	102
S.	Records .....	103
T.	Partial Occupancy or Use .....	104
1.13	PROSECUTION AND PROGRESS .....	105
A.	Owner's Right to Do Work at Contractor's Expense .....	105
B.	Subcontracting .....	106
C.	Work Force .....	107
D.	Substitution of Materials and Equipment to be Incorporated into the Work .....	107
E.	Limitation of Operations .....	108
F.	Construction Schedules .....	109
G.	Meetings .....	113
H.	Contract Time to Complete Work .....	115
I.	Adjustment of Contract Time .....	115
J.	Remedies for Delay .....	117
K.	Time Is of the Essence .....	118
L.	Suspension of Work .....	119
M.	Termination of Right to Proceed .....	120
N.	Subcontractor Termination Claims .....	124
1.14	MEASUREMENT OF PAY QUANTITIES .....	125
A.	Scope .....	125
B.	Measurement Guidelines .....	125

1.15	PAYMENT .....	128
A.	Scope and Limit.....	128
B.	Changes to Plans or Character of Work.....	128
C.	Progress Payments and Retained Amounts .....	128
D.	Mid-Month Payment.....	131
E.	Monthly Progress Payment .....	132
F.	Advance Payment for Materials.....	134
G.	Retainage and Withheld Amounts .....	135
H.	Final Payment.....	137
I.	Payment Requirements per Statute .....	137
1.16	PAYMENT FOR CHANGED OR EXTRA WORK .....	143
A.	General .....	143
B.	Change Orders .....	143
C.	Other Changes to Compensation .....	144
1.17	PAYMENT FOR FORCE ACCOUNT WORK.....	144
A.	General .....	144
B.	Materials .....	145
C.	Equipment.....	146
D.	Labor.....	149
E.	Subcontractor Mark up .....	150
F.	Billings .....	151
1.18	DISAGREEMENTS, PROTESTS, AND CLAIMS.....	151
A.	Claims Procedure .....	151
B.	Litigation .....	155
	PRODUCTS (NOT USED).....	156
	EXECUTION (NOT USED).....	156



THIS PAGE IS INTENTIONALLY BLANK

DRAFT



## SECTION 007200 – GENERAL CONDITIONS

### PART 1 - GENERAL

#### 1.01 ORGANIZATION, CONVENTIONS, ABBREVIATIONS, AND DEFINITIONS ORGANIZATION

##### A. Organization of Specifications

1. This publication is comprised of Divisions, 00 through 50. Division 00, General Conditions presents the approach for the development of the GMP, contractual relationships, and project specific conditions. Divisions 01, General Requirements, contains the administrative and procedural requirements, temporary facilities and controls, performance requirements and life cycle activities. Division 02 and beyond contain the detailed technical specifications involved in prosecution of the Work, organized by subject matter.
2. Each Division is divided into Sections, articles, paragraphs, and subparagraphs.
  - a. Division:                   DIVISION 02                   SITEWORK
  - b. Section:                   SECTION 022220   EXCAVATING
  - c. Article:                   3.04                   TRENCH EXCAVATION
  - d. Paragraph                A.                   Open Trench Limit
  - e. Subparagraph        1.                   Unfinished Trench
3. Articles are identified by numbers and capitalized headings and are subdivided into paragraphs and sub-paragraphs.
4. Reference to a Section includes all applicable requirements of the Section.
5. When referring to an Article within the same Section, only the number of the Article may be used; the word "Article" is implied.
6. Where Section and Article numbers are not consecutive, the interval has been reserved for use or future expansion of the Specifications

#### 1.02 CONVENTIONS

##### A. Conventions Used Throughout the Specifications Include:

1. Grammar: The Specifications are generally written in the indicative mood, in which the subject is expressed. The technical specifications

in Divisions 02 to 50 are generally written in the imperative mood, in which the subject is implied. Therefore, throughout Division 02 and beyond, and on the Plans:

- a. The subject, "the Contractor", is implied.
  - b. "Shall" refers to action required of the Contractor and is implied.
  - c. "Will" refers to decisions or actions of the Owner or the Engineer.
  - d. The following words, or words of equivalent meaning, refer to the actions of the Owner or the Engineer, unless otherwise stated: "allowed", "directed", "established", "permitted", "ordered", "designated", "prescribed", "required", "determined".
  - e. The words "approved", "acceptable", "authorized", "satisfactory", "suitable", "considered", and "rejected", "denied", "disapproved", or words of equivalent meaning, mean by or to the Owner or the Engineer.
  - f. The words "as shown", "shown", "as indicated", or "indicated" mean "as indicated on the Plans".
  - g. Certain Articles labeled "Payment" contain statements to the effect that "payment will be made at the Contract Amounts for the following items" (followed by a list of items). In such cases the Owner shall pay for only those Pay Items listed in the Schedule of Items.
2. Capitalization of Terms: Capitalized terms used in the General Conditions, other than titles, abbreviations, and grammatical usage, indicate that they have been given a defined meaning. Defined terms may be used together and the combined term and the meaning of the combined terms. A defined term that is a noun may be used in its verb or adjective form and vice-versa. In Divisions 02 and beyond, defined terms will generally not be capitalized, with the notable exception of "the Contractor", "the Owner" and "the Owner's Representative".
  3. Punctuation: In this publication the "outside method" of punctuation is employed for placement of the comma and the period with respect to quotation marks. Only punctuation that is part of the quoted matter is placed within quotation marks.
  4. References to Laws, Acts, Regulations, Ordinances, Statutes (Oregon Revised Statutes) Rules (Oregon Administrative Rules), Orders, and Permits: References are made in the text of the Specifications to "laws", "acts", "rules", "statutes", "regulations", "ordinances", etc. (collectively referred to for purposes of the General



Conditions as “Law”), and to “orders” and “permits” (issued by a governmental authority, whether local, State, or federal, and collectively referred to for purposes of General Conditions as “Permits”). Reference is also made to “applicable laws and regulations”. The following conventions apply in interpreting these terms, as used in the Specifications.

- a. Statutes and Rules: Oregon Revised Statutes (ORS) and Oregon Administrative Rules (OAR) referenced in the Contract Documents are accessible online, including through the Oregon Legislative Counsel Committee website and through the Oregon Secretary of State Archives Division websites.
- b. Law: In each case, unless otherwise expressly stated therein, the Law is to be understood to be the current version in effect. This also applies where a specific Law is referenced or cited, regardless of whether the text of the Law has been included in the Specifications or not, and regardless of whether the text of the Law has been summarized or paraphrased. In each case, the current version of the Law is applicable under any Contract. The reader is therefore cautioned to check the actual text of the Law to confirm that the text included in the Specifications has not been modified or superseded.
- c. Permits: Orders and permits issued by a government agency may be modified during performing the Work under a Contract. Therefore, wherever the term “order” or “permit” is used in the Specifications, it is intended to refer to the then-current version. That version may be embodied in a modified, superseding order or permit, or it may consist of all terms and conditions of prior orders or permits that have not been superseded, as well as the additional terms added by amendment or supplement. In certain cases, the orders or permits are identified by name in the Specifications; in other cases, the terms are used in the generic sense. The reader is cautioned to check the text(s) of each order and permit identified either by name or by generic reference.
- d. Applicable Laws and Regulations: Where the phrase “applicable laws and regulations” appears, it includes all applicable laws, acts, regulations, administrative rules, ordinances, statutes, and orders and permits issued by a governmental or regulatory authority.
5. Owner’s Representative and Engineer Terms: The specification uses both the terms “Owner’s Representative” and “Engineer.” The Contractor is to direct all requests, including requests for an Engineer’s decision, to the Owner’s Representative who in turn will forward all engineering matters to the appropriate engineer for resolution. This includes questions about whether to follow the

manufacturer's recommendations for a given product application. The Owner's Representative will be designated in writing.

### 1.03 DEFINITIONS

#### A. As Used in the Contract Documents

Following are definitions of words and phrases used in the Specifications, on the Plans, and in other Contract Documents. Other definitions may be in the individual Sections of the Specifications to which they apply, and the Code of the City of Portland.

1. Acceptance of the Work: The point at which the Work has been completed to the Owner's satisfaction and occurs when the Owner approves of the Certificate of Completion executed by the Contractor.
2. Access Road: A permanent Project Site road on the Owner's property. Also known as Service Road.
3. Act of God or Nature: A natural phenomenon of catastrophic proportions or intensity, that could not have been prevented by reasonable foresight or care.
4. Addenda or Addendum: Additions or deletions to, material changes in, or general interest explanations of, the Owner's Solicitation Documents.
5. Additional Work: Increased quantities of any Pay Item, within the scope of the Contract, for which a Unit Price has been established.
6. Advertisement: The public announcement (Notice to Proposers) inviting Proposals for Work to be performed or Materials to be furnished.
7. Aggregate: Fractured rock, unless otherwise indicated, of specified quality and gradation.
8. Allowance: A number that represents the maximum amount paid by the Owner for a specifically identified portion of the Work, such as materials, labor or both, even if such items have not been quantified in the Contract Documents. Allowances are Owner optional Work that may be performed only with the Owner approval. All allowances shall be deemed to be included in the Contract Amount and shall be listed in the Schedule of Values but there is no guarantee that all money listed as Allowance will be moved to Reimbursable Costs. To the extent the specifically identified portion of the Work is performed, Allowances will be moved to Reimbursable Cost of the Work by a Contract Change Order when approved.

9. Application for Payment: A written request for payment based on an estimate of Work performed that is submitted by the Contractor to the Owner's Representative, accompanied by such supporting documentation as is required by the Contract Documents.
10. Approved: Where used in conjunction with the Owner's response to requests, applications, inquiries and reports by the Contractor, the meaning of the term "approved" will be held to the limitations of the Owner Representative's responsibilities and duties as specified in these General Conditions. In no case will "approved" release the Contractor from its responsibilities to fulfill requirements of the Contract Documents.
11. Architect: An individual qualified and registered to practice architecture under ORS 671.220 to 671.220.
12. Architect's Supplemental Instructions (or ASI): Information provided to the Owner's Representative by the Architect regarding the Project.
13. As-Built Drawings (or "As-BUILTS"): Drawings showing how the Project has been constructed.
14. Attorney: The City Attorney of the City of Portland, Oregon, or authorized representative.
15. Auditor: The City Auditor of the City of Portland, Oregon, or authorized representative.
16. Award: The Owner's execution of a Contract with a particular Proposer evidenced by the Owner's signature on the Contract.
17. Backside Plumbing Work: Plumbing work performed between the water meter and a connected facility such as a building or house, or within the connected facility.
18. Base: A Course of specified material of specified thickness placed below the Pavement.
19. Bid: A competitive offer binding on the Bidder and submitted in response to an Invitation to Bid.
20. Bid Documents: Those documents upon which a Bidder bases its Bid to the CM/GC, which include, but are not limited to, the Instructions to Bidders, the general bidding requirements, the proposed Contract Documents including: the Specifications, Plans, Addenda issued prior to Bid opening, and Permits and other documents included in the Specifications by specific reference, and any other documents that may be designated therein as part of the Bid Documents.

21. Bid Schedule – The list of Pay Items, their units of measurement, and estimated quantities.
22. Bidder: Any Subcontractor who submits a Bid to the CM/GC for a discrete portion of the Work.
23. Bike Lane: A lane in the Traveled Way designated by striping and Pavement markings for the preferential or exclusive use of bicyclists.
24. Bonds: Documents issued by third parties that provide financial protection to the Owner if the Contractor fails to perform the Work (“Payment and Performance Bonds”) or warrants the Work (maintenance or Warranty Bond) as required by the Contract Documents.
25. Borrow: Material lying outside of planned or required Roadbed excavation used to complete Project earthwork.
26. Boulders: Particles of rock that will not pass a 12-inch square opening.
27. Bridge: A single or multiple span Structure, including supports, that carries motorized and non-motorized vehicles, pedestrians, or utilities on a Roadway, walk, or track over a watercourse, highway, railroad, or other feature.
28. Bureau: A subdivision of the City of Portland. The Bureaus of the City of Portland include, but are not limited to, the following: Environmental Services, Internal Business Services, Parks and Recreation, Development Services, Transportation, and Water.
29. Buttress: A rock fill placed at the toe of a landslide or potential landslide in order to resist slide movement.
30. Calendar Day: Any day shown on the calendar, beginning at midnight and ending at midnight, twenty-four hours later, unless otherwise specified by a more specific provision of the Contract Documents.
31. Camber: A slight arch or curvature in a surface or Structure to compensate for loading.
32. Certificate of Completion: A document that may be provided by the Owner that requires the Contractor to certify that the Work has been satisfactorily completed, if the Contract Documents require one.
33. Certificate of Occupancy/Certificate of Final Inspection: A document provided by a regulatory agency that authorizes partial or full

occupancy of a building or structure. Such document does not constitute a Certificate of Completion.

34. Certifications – Documents that show that Materials, Products, Parts and Equipment required by the Contract Documents meet the requirements of a Reference Specification. Certifications shall require no interpretation of test results by the Owner to determine whether the requirements of the Reference Specification have been met.
35. Change Order: A written agreement between the Owner and Contractor changing the scope of Work, Contract Time or Contract Amount.
36. Change Order Request (COR): A written communication submitted by the Contractor to the Owner identifying proposed changes to the Contract that have not yet been performed and the impact on the Contract Time or Contract Amount or both that will only be authorized to the extent the COR is signed by both the Contractor and the Owner or a Change Order is issued. A Change Order Request does not fulfill the requirements for claim notification as set forth in the claim procedure.
37. Changed or Extra Work: - Changes or additions to the Plans, quantities or details of construction that may be necessary or desirable during Project construction.
38. Chief Procurement Officer: The individual in charge of the Procurement Services Division of the Office of Management and Finance.
39. City: The City of Portland, Oregon, synonymous with the Owner.
40. Claim: A request by a Contractor for additional compensation due to Changed or Extra Work, where the Contractor and Owner have not been able to agree on the validity or value of the changes or additions.
41. Claims Package: Documents required to be submitted to substantiate a Contractor's right to, and the amount of, additional compensation or time requested pursuant to the claim procedure.
42. Clay: Soil passing a No. 200 sieve that can be made to exhibit plasticity (putty-like properties) within a range of water contents.
43. Clear Zone: Roadside border area, starting at the edge of the Traveled Way, which is available for safe use by errant vehicles. Establishing a minimum width Clear Zone implies that rigid objects and certain other hazards within the Clear Zone should be relocated

outside the Clear Zone, or shielded, or remodeled to make them break away on impact or be safely traversable.

44. Close Conformance: Where working tolerances are given on the Plans or in the Specifications, Close Conformance means compliance with those tolerances. Where working tolerances are not given, Close Conformance means compliance, in the Owner's Representative's judgment, with reasonable and customary manufacturing and construction tolerances.
45. Coarse Aggregate: Crushed Rock or crushed Gravel retained on a 1/4-inch sieve, with allowable undersize.
46. Cobbles: Particles of Rock, rounded or not, that will pass a 12-inch square opening and be retained on a 3-inch sieve.
47. Code: The ordinances adopted by the City Council of Portland that are in effect as of the date of the Contract and as subsequently amended. The term "Code" includes all regulations adopted by Bureaus and other jurisdictions issuing permits.
48. Commercial Grade Concrete: Concrete furnished according to Contractor proportioning, placed in minor Structures and finished as specified.
49. Competent Person – One who can identify existing and predictable hazards in the surroundings or working conditions which are unsanitary or unsafe and who is authorized to require corrective measures to eliminate them.
50. Construction Change Directive: A written statement prepared by the Owner's Representative directing the Contractor to make additions, deletions, or other revisions to the Work to be performed. The CCD will be issued when Changed or Extra Work is necessary, but the Owner and Contractor have not reached agreement regarding the effect of the Changed or Extra Work on the Contract Amount or Contract Time, or both prior to the execution of the Changed or Extra Work.
51. Construction Management (CM): Management services provided to an Owner of a Project during the Pre-Construction Phase (Phase 1), Construction Phase (Phase 2 and/or Phase 3), or all, by a person or entity possessing requisite training and experience. Such management services may include advice on the time and cost consequences of design and construction decisions, scheduling cost control, coordination of contract negotiations and awards, timely purchasing of critical materials and long-lead items, and coordination of construction activities.

52. Construction Manager/General Contractor (CM/GC): The individual, partnership, corporations, joint-venture or other legal entity awarded the Contract. The primary contractor, also known as the "Contractor", "Prime Contractor" or "Prime". The CM/GC functions as a member of the project team.
53. Construction Manager/General Contractor Fee (CM/GC Fee): The Construction Manager/General Contractor fixed fee is the compensation paid to the CM/GC for performing the Work in Phase 2 or Phase 3 of the project other than the Reimbursable Cost of the Work.
54. Construction Phase: The portion of the work following the CM/GC's submission of the GMP and awarding of the Contract by the Owner and ending with the expiration of Warranties.
55. Construction Schedule: Schedule provided by the Contractor to the Owner, as required by the Contract, which shall not exceed the Contract Time, shall relate to the entire Project, and shall provide for the expeditious and practical execution of the Work.
56. Contract: The written agreement between the Owner and the CM/GC that defines the obligations of the CM/GC and the Owner regarding the Work to be performed and included in the Contract Documents.
57. Contract Amount: The actual amount of money owed to the Contractor for performing the Work.
58. Contract Documents: Written agreements between the Owner and CM/GC that define the obligations between the CM/GC and the Owner and documents that set forth the scope of work to be performed to complete the Project. Contract Documents include, but are not limited to, Permits, Plans, the Specifications, Addenda, General Conditions, Permit Applications, Land Use Decision, Regulatory Reviews, Permits, Change Orders, and any other documents that may be referenced therein as part of the Contract.
59. Contract Time: The amount of time stated in the Contract Documents for performance of all of the Work required to fully complete performance under the Contract, or any specified portion thereof.
60. Contractor: An Entity that has entered into a Contract with the Owner for the Work, synonymous with "Construction Manager/General Contractor," "CM/GC," "Prime Contractor," or "Prime."
61. Contractor Furnished Insurance: Certain insurance coverage provided by the Contractor and not included in OCIP as specified.

- 62. Contractor Quality Control (CQC): The means by which Contractor ensures that the Work complies with the requirements of the Contract Documents.
- 63. Contractor's Representative: A person designated in writing by the Contractor to sign Contract changes, accept payments, and to act upon instructions from the Owner.
- 64. Council: The City Council of the City of Portland, Oregon.
- 65. Course: A specified Surfacing Material placed in one or more Lifts to a specified thickness.
- 66. Coverage: One Pass by a piece of Equipment over an entire designated area.
- 67. Cross Section: The exact image formed by a plane cutting through an object, usually at right angles to a central axis, to determine area.
- 68. Current: When used in relationship to a code, edition, manual or version of reference material, it is the document that is available for use at the time the GMP is delivered to the Owner.
- 69. Day: A Calendar Day.
- 70. Defective Work: Work that: is performed in an unsatisfactory, faulty, or deficient manner, does not conform to the Contract Documents, does not meet the requirements of any reference standard, test, or approval referred to or incorporated by the Contract Documents, or has been damaged by anyone other than the Owner prior to Acceptance of the Work, whether or not such Work is in possession of the Owner or in use by the Owner.
- 71. Deficiency List: A list prepared by the Owner's Representative reflecting items of Work that need to be completed or corrected before the Owner's Representative accepts the Contract as Substantially Complete.
- 72. Definable Feature of Work: A task which is separate and distinct from other tasks, has separate control requirements, and may be identified by different trades or disciplines, or it may be work by the same trade in a different environment. Although each section of the specifications may generally be considered as a definable feature of work, there are frequently more than one definable feature under a particular section.
- 73. Designer: The individual, partnership, corporation, joint-venture, or other legal entity named as such by the Owner. For this project, it is further defined as Stantec Consulting Services, Inc.



74. Direct Costs – Labor and Materials, also known as time and materials required to implement Changed or Extra Work. Direct costs shall not include profit and overhead.
75. D/M/W/ESB/SDVBE – Business certified by State of Oregon as a disadvantaged business enterprise (“DBE”), minority-owned business enterprise (“MBE”), woman business enterprise (“WBE”), an emerging small business (“ESB”) or service-disabled veteran businesses (SDVBE).
76. Drawings: The term “drawings” is synonymous with “Plans”, both of which are provided by the Owner. They are distinguished from “Working Drawings” or “Shop Drawings” which are provided by the Contractor.
77. Durable Rock: Rock that has a slake durability index of at least 90 percent based on a two-cycle slake durability test, according to ASTM D 4644. In the absence of test results, the Engineer may evaluate the durability visually.
78. Easement: The right to use a defined area of property for a specific purpose or purposes.
79. Emulsified Asphalt: Emulsified asphalt cement.
80. Emulsified Asphalt Concrete: A mixture of Emulsified Asphalt and graded Aggregate.
81. Engineer: An individual who is qualified and registered in Oregon and holds a valid certificate to practice engineering provided under ORS 672.002 – 672.325.
82. Entity: A, sole proprietorship, limited liability company, corporation, partnership, limited liability partnership, limited partnership, profit or nonprofit unincorporated association, business trust, two or more persons having a joint or common economic interest, or any other person with legal capacity to contract, or a government or governmental subdivision.
83. Environmental Laws: Any applicable statute, law, ordinance, order, consent decree, judgment, Permit, license, Code provision, covenant deed, common law, treaty, convention, or other requirement pertaining to protection of the environment, health or safety, natural resources, conservation, wildlife, waste management or disposal, Hazardous Substances or pollution, including but not limited to regulation of releases to air, land, water and groundwater.

84. Equal: A substitute for a product, component or process whose use in or on a particular Project is specified. The "Equal" substitute shall be the same or better for that named, in features, function, performance, quality, reliability, utility, value, and suitability for the particular use.
85. Equipment: Refers to an apparatus with operational parts, regardless of whether motorized or manually operated, including products with service connections such as wiring, or piping needed to complete the Contract or specified for incorporation into the Work.
86. Equitable Adjustment: A term used to describe a change in the Contract Amount, Contract Time, or both when the Contract Documents authorize such a change.
87. Establishment Period: The time specified to assure satisfactory establishment and growth of planted Materials.
88. Excusable Delay – A Delay that arises from unforeseeable causes that are beyond the control and without the fault or negligence of the Contractor, its Subcontractors and suppliers.
89. Existing Surfacing: Pavements, slabs, curbs, gutters, walks, driveways, and similar constructions of bricks, blocks, Portland cement concrete, bituminous treated materials, and granular surfacing materials on existing Roadways.
90. Extra Work: An item of Work not provided for in the Contract Documents as Awarded, but ordered, in writing, by the Owner's Representative as essential to the proper completion of the Project within its intended scope.
91. Field Order (FO): A written order issued by the Owner's Representative that does not involve a change in the Contract Amount, Contract Time, or the intent of the Contract Documents. In contrast to a Construction Change Directive or a Unilateral Change Order, a Field Order is intended to assist in the completion of the Work without a change to the Contract Amount or additional Contract Time. Field Orders include, but are not limited to, identifying relevant Contract provisions in response to a Contractor's question, clarifying a contractual requirement or direction minor Changed Work that can be performed by the Contractor without additional cost and without the need for additional Contract Time.
92. Final Completion: The date, following Substantial Completion, when the Owner agrees that the Contractor has satisfied all requirements of the Contract Documents and may request Final Payment.

93. Final Cost Savings: This is the positive difference, if any, between the Guaranteed Maximum Price Contract and the amount actually owed to the Contractor pursuant to the Contract Documents.
94. Final Inspection: The inspection conducted by the Owner's Representative to determine that the Project has been completed in accordance with the Contract Documents.
95. Final Payment: The last progress payment made to the Contractor for earned funds, if any, plus withheld Retainage, less deductions permitted or required by the Contract Documents.
96. Fine Aggregate: Crushed Rock, crushed Gravel, or Sand that passes a ¼-inch sieve, with allowable oversize.
97. Force Account (FA) Work: Changed or Extra Work performed by the Contractor to be compensated as determined by the Force Account basis that was ordered in writing by the Owner's Representative, when negotiation has not resulted in a price mutually acceptable to the Contractor and the Owner.
98. Foreign Contractor: A Contractor who is not domiciled in Oregon or registered by the Secretary of State of the State of Oregon to do business in the State of Oregon.
99. General Construction Safety Provisions: A document included as part of the Contract Documents that establishes minimum safety standards for all Work performed under the contract.
100. Granular Material: Graded and selected free-draining material composed of particles of Rock, Sand, and Gravel.
101. Gravel: Particles of Rock, rounded or not, that will pass a 3-inch sieve and be retained on a No. 4 sieve.
102. Guaranteed Maximum Price (GMP): The sum of the reimbursable cost of Work and the CM/GC Fee.
103. Guaranteed Maximum Price Documents: Those items upon which a CM/GC bases its GMP to the Owner, which include, but are not limited to, the Proposal, the proposed Contract Documents including: the Specifications, Plans, Addenda issued prior to the GMP, Permits, Land Use Reviews and any other items that may be designated therein as part of the GMP Documents.
104. Hard Construction Costs: The Cost to build improvements on a property, including all related construction labor and Materials, including fixed and built-in equipment costs. Costs not directly related

to the construction of an improvement, such as profit, overhead, administration, or taxes or other professional services shall not be considered as part of the Hard Construction Costs. Costs related to Specialty Work are not to be included in Hard Construction Costs unless assessment shows that there is availability and capacity of D/M/W/ESB/SDVBE firms to perform such Specialty Work.

105. Haul Road: A temporary road on the Project Site for construction traffic.
106. Haul Route: A combination of permanent and temporary roads on and off Project Site, used for conveyance of equipment and material as identified in the Traffic Control Plans.
107. Hazardous Substances: Substances or materials defined as hazardous in Oregon law or under deferral law.
108. Highway: Every road, street, thoroughfare and place, including bridges, viaducts and other structures within the boundaries of the State, open, used or intended for use by vehicular traffic.
109. Incidental: A term identifying those acts, services, transactions, property, or other items for which the Owner will make no separate or additional payment.
110. Incidental Work: Work necessary for fulfillment of the Contract Documents, but which is not listed as a Pay Item or otherwise identified in the GMP and for which no separate or additional payment is made.
111. Inspector: An employee of the Owner or of the Owner's Representative authorized to inspect and report on some aspects of Contract performance. Inspectors are distinguished from Regulatory Inspectors (defined below).
112. Interfacing Work: That portion of the Work that connects to, abuts, or meets with work of another contractor, which may require cooperation between the two contractors in order that the Work is successfully completed.
113. Job Safety Analysis – A detailed study of a job or activity to determine what potential safety and health hazards exist during the various steps. The JSA focuses on the relationship between the worker, the task, the tools, and the work environment. After identifying any uncontrolled hazards, the JSA should identify ways to eliminate or reduce them.

114. Landscape Architect: A individual qualified and registered with the State Landscape Architect Board to practice landscape architecture under ORS 671.31) to 671.459
115. Law: Any federal, state, or “local” law, ordinance, Code, regulation, or rule. In each case, unless otherwise expressly stated, the Law is to be understood to be the current version in effect. This also applies where a specific Law is referenced or cited, regardless of whether the text of the Law has been included in the Contract Documents or not, and regardless of whether the text of the Law has been summarized or paraphrased. In each case, the current version of the Law is applicable under the Contract Documents.
116. Leveling: Placing a variable-thickness Course of Materials to restore horizontal and vertical uniformity to existing Pavements, normally continuous throughout the Project.
117. Licensed Professional – An Architect, Engineer or Landscape Architect licensed to perform such work in the State of Oregon.
118. Lift: The compacted thickness of material placed by Equipment in a single Pass.
119. Lump Sum: A way of expressing the Contract Amount for the Work, or the price bid or listed in the CM/GC detailed GMP for a portion of the Work, stated as a single price for all labor, materials, supplies, Incidental Work, overhead and profit without any breakdown into its component parts.
120. Mark up – Subcontractor profit, overhead or any indirect or soft costs incurred in the performance of compensable Changed or Extra Work.
121. Materials: Any natural or manmade substance specified for use in the construction of the Project or for incorporation into the Work.
122. Materials Conformance Documents – refers to documents that demonstrate that the Materials, Part, Product or Equipment meets the requirements of the Contract Documents. Examples of Materials Conformance Documents that may be acceptable include Shop Drawings, Materials lists, Equipment lists, catalog description sheets, manufacturer’s brochures, or independent assurance test results that include the identity of the testing facility.
123. Median: The portion of a divided Highway separating traffic traveling in opposite directions.

124. Mobilization: Necessary actions taken by the Contractor to begin the Work, such as bonds and insurance, the establishment of temporary facilities, equipment and personnel at the Project Site.
125. Multiple Course Construction: Two or more Courses, exclusive of Patching or Leveling, placed over the entire Roadway width.
126. Multi-Use Path: That portion of the Roadway Right-of-Way or a separate Right of Way, physically separated from motor vehicle traffic and designated for use by pedestrians, bicyclists and other non-motorized users.
127. Neat Line: Theoretical lines specified or indicated on the Plans for measurement of quantities.
128. Nondurable Rock: Rock that has a slake durability index of less than 90 percent based on a two-cycle slake durability test, as tested by ASTM D 4644, or Rock that is observed to readily degrade by air, water, and mechanical influence.
129. Notice: A written communication delivered by hand or by mail to an individual, employee, agent, official, or officer of the Owner or the Contractor authorized to receive notice, as set forth in the Contract Documents or as prescribed by Law. Communications sent by facsimile transmission ("fax"), email, or other electronic transmissions are not considered to be adequate notice unless a copy of the original is mailed to the intended recipient of such notice.
130. Notice to Proceed (NTP): The written Notice issued by the Owner's Representative to the Contractor authorizing the Contractor to proceed with all, or part of, the Work and sets forth the time when Contract Time will begin.
131. On-Site Work: Any Work taking place on the Project Site included staging areas adjacent to the Project Site, except for installation temporary signs.
132. Organic Soil: A Soil with sufficient organic content to influence the Soil properties.
133. Owner: The City of Portland.
134. Owner Controlled Insurance Program (OCIP): An insurance policy provided by the Owner for certain insurance coverage for eligible Contractors and Subcontractors for the Work at Owner expense.

135. Owner-Controlled Lands: Lands owned by the Owner, or controlled by the Owner under lease or agreement, or under the jurisdiction and control of the Owner for the purposes of the Contract.
136. Owner's Representative: An employee acting on behalf of the Owner who has authority to make decisions regarding the Work and the Contract, except to the extent that City Council approval is required by the City's Charter, the City's Code or any specific ordinance. In any particular Contract, the Owner's Representative may be designated in writing by the Chief Engineer of the Portland Water Bureau as the Construction Manager or other individual. See reference Article 1.02A.5
137. Parts: Refers to portions of Products, Materials and Equipment.
138. Pass: One movement of a piece of Equipment over a particular location.
139. Patching: Placing a variable-thickness Course of Materials to correct sags, dips, or bumps to the existing grade and cross section, normally intermittent throughout the Project.
140. Pavement: Asphalt concrete or Portland cement concrete placed for the use of motor vehicles, bicycles, or pedestrians on Roadways, Shoulders, Multi-Use Paths and parking areas.
141. Pay Item: A specific unit of Work for which a price is provided in the Contract.
142. Pea Gravel: Naturally occurring round gravel that will pass a 3/8-inch sieve and be retained on a number 4 sieve.
143. Peat: A Soil composed primarily of vegetative matter in various stages of decomposition, usually with an organic odor, dark brown to black color, and a spongy consistency.
144. Performance Bond and Payment Bond: Documents issued by a Surety that promise, in general, that a) the Work will be completed and performed in accordance with the Contract Documents and b) that all persons supplying labor or materials for the Project will be paid, in the event of a Contractor default.
145. Permit: Written authorization to do specific Work issued by City Bureaus, Multnomah County, City of Gresham or outside agencies having statutory or proprietary jurisdiction over portions of the Work.
146. Plans: The Project-specific official plans, profiles, Cross Sections, elevations, details, and other working, supplementary and detail

drawings, or reproductions, stamped by a person licensed to do the same, that show the location, character, dimensions and details of the Work to be performed. Plans may either be bound in the same book as the balance of the Contract Documents or bound in separate sets and are a part of the Contract Documents.

- 147. Prequalification: A process by which Proposers or Bidders become eligible to submit Proposals or Bids.
- 148. Procurement Rules: Those rules adopted by the Owner that govern purchasing of goods, services and materials found in Chapter 5.33 and 5.34 of the Code of the City of Portland.
- 149. Product Data – Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate Materials or Equipment for some portion of the Work.
- 150. Products – Refers to purchased items for incorporation into the Work, regardless of whether specifically purchased for the Project or taken from the Contractor's stock of previously purchased items.
- 151. Project: General term encompassing all phases of the Work to be performed under the Contract and is synonymous with the term Work.
- 152. Project Site: Limits as identified in Exhibit J and is included in Section 007200 - General Conditions.
- 153. Property Owner: The person(s) listed on the County tax records as the legal owner of a specific piece of property.
- 154. Property Owner's Authorized Representative: The person(s) the Property Owner has designated in writing as representing his/her interests with regard to their property.
- 155. Proposer: The individual, partnership, corporation, joint-venture, or other legal entity that delivers a Proposal for possible selection by the Owner as the CM/GC for the Phase 1 Pre-construction and potentially for Phase 2 or Phase 3 services for the Bull Run Filtration Project. Synonymous with "Prime CM/GC PROPOSER."
- 156. Provide: When related to an item or part of the Work, the word "provide" shall be understood to mean furnish and install the Work complete and in place.
- 157. Public Traffic: Vehicular or pedestrian movement not associated with the Contract Work, on a public way.



158. Publicly-Owned Equipment: Equipment acquired by the Owner primarily for use in its own operations.
159. Punch List: The Work necessary after Substantial Completion to complete the Project.
160. Purchasing Agent: See "Chief Procurement Officer".
161. Quality Assurance: All those planned and systematic actions necessary to provide confidence that a product or service will satisfy given requirements for quality.
162. Quality Control: All activities that are performed or conducted to fulfill the Contract Documents requirements.
163. Railroad: Publicly or privately-owned rail carriers, including passenger, freight, and commuter rail carriers, their tenants, and licensees as well as Utilities that jointly own or use such facilities.
164. Reasonably Inferred: Takes into consideration the understanding of the parties that some details necessary for completion of the Work may not be shown on the Drawings or included in the Specifications, but they are a requirement of the Work if they are a usual and customary component of the Work or otherwise necessary for complete installation and operation of the Work.
165. Record Documents: Documents that note changes made during construction, including, but not limited to As-Built drawings, Operations and Maintenance Manuals (O & M), contract directives, approved shop drawings, special details, field test records, and photos.
166. Reference Specifications: Bulletins, standards, rules, methods of analysis or testing, Codes and Specifications of other agencies, engineering societies, or industrial associations referred to in the Contract Documents that when included in the Contract Documents establish the basis by which specific portions of the Work are to be performed. All such references specified refer to the latest edition thereof including any amendments which are in effect at the time the GMP is delivered to the Owner.
167. Regulatory Inspectors: Persons employed, including but not limited to, City of Gresham Building Division, ODOT, DEQ, DHS and DSL, by regulatory bodies who have authority to determine whether Work performed by the Contractor has been performed according to the regulations and codes applicable to that portion of the Work (e.g., electrical, plumbing, etc.).

168. Release: When used in regard to environmental regulations, the term “release” has the meaning ascribed to it by Oregon Law.
169. Request for Information (RFI): A form approved for use by the Owner’s Representative that the Contractor uses to request information, and upon which the Owner’s Representative’s response will be returned.
170. Request for Proposal or Proposal Request (RFP or PR): A Request for Proposal or Proposal Request after the Phase 2 Construction Contract is awarded is a written communication by the Owner to the Contractor seeking information about the effects of a possible change to the Work.
171. Retainage: The difference between the amount earned by the Contractor and the amount paid on the Contract by the Owner, where such amount is retained by the Owner from progress payments.
172. Right-of-Way: A general term denoting public land, property, or interest therein, acquired for or devoted to a public street, public access or public use.
173. Roadbed: Completed excavations and embankments for the Subgrade, including ditches, side slopes, and slope rounding, if any.
174. Roadway: That portion of a street or highway improved, designed or ordinarily used for vehicular travel, including its appurtenances between curbs, gutters, or ditches, but exclusive of the berm or shoulder.
175. Rock: Natural deposit of solid material composed of one or more minerals occurring in large masses or fragments.
176. Samples – Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.
177. Sand: Particles of Rock that will pass a No. 4 sieve and be retained on a No. 200 sieve.
178. Schedule of Items: The list of Pay Items, their units of measurement, estimated quantities, and prices.
179. Schedule of Values: A general itemization of Work to be performed accompanied by an associated cost that is sometimes required when the Work, or a portion of the Work, has been priced on a Lump Sum basis. When accepted by the Owner, the Schedule of Values determines how much money the Contractor is entitled to receive for

Work performed in a given time period based on its progress in completing the items of Work listed.

- 180. Service Road: See Access Road.
- 181. Shop Drawings – Shop Drawings are drawings, diagrams, schedules and other data specifically prepared for the Work by the Contractor, a Subcontractor at any tier, manufacturer, supplier or distributor to illustrate some portion of the Work.
- 182. Shoulder: The part of a Roadbed contiguous to the Traveled Way or Roadway, whether paved or unpaved, for accommodating stopped vehicles, for emergency use and for lateral support of Base and surface Courses.
- 183. Shown: As used in the Contract Documents, the words “shown,” or “as shown,” refer to work shown, indicated, or described on the Plans in the Contract that can be reasonably inferred as belonging to the item of Work described or indicated and that is required by good practice to provide a complete and satisfactory system or structure.
- 184. Silt: Soil passing a No. 200 sieve that is non-plastic or exhibits very low plasticity.
- 185. Single Course Construction: A wearing Course only, not including patching or leveling Courses or partial width Base Course.
- 186. Slope: Ratio of vertical distance to horizontal distance, unless otherwise specified.
- 187. Soil: Accumulations of particles produced by the disintegration of Rock, which sometimes contains organic matter. Particles may vary in size from Clay to Boulders.
- 188. Solicitation Document: Any document that requests submission of a GMP or Proposal or other offer to the Owner to enter into a Contract. All documents mentioned in the solicitation document are incorporated by reference in the solicitation document.
- 189. Special Inspector: See Regulatory Inspectors.
- 190. Special Services: Force Account Work services that the Contractor and Owner’s Representative agree cannot be satisfactorily performed by the Contractor’s and Subcontractors’ forces, e.g., fabrication and machining work that is most effectively performed away from the Project Site, or rental of operated Equipment as defined in Article 1.17C.12.

191. Specialty Work: The scope of Work for the Project that requires a CM/GC or Subcontractor with unique, specialized skills and/or equipment to perform that scope of Work.
192. Specifications: Contract Documents that describe the Work and include any Reference Specifications incorporated therein.
193. Specified: As used herein, the word “specified,” or “as specified,” means as required by the Contract.
194. Stamped Working Drawings: Working Drawings that are prepared by or under the direction of a Licensed Professional and that bear the Licensed Professional’s signature and seal.
195. Standard Details and Standard Drawings: Owner prepared details and drawings for Work or methods of construction that normally do not change.
196. Station: A distance of 100 feet that is measured horizontally along the established centerline of a street, sewer, potable water main, or other work, unless specified otherwise.
197. Street: Any public Right-of-Way, whether improved or unimproved, including, but not limited to, an avenue, boulevard, alley, lane, bridge, bicycle path, road, public thoroughfare or public way and any land over which a Right-of-Way has been obtained or granted for any purpose of public travel.
198. Structures: Bridges, retaining walls, endwalls, cribbing, buildings, culverts, manholes, catch basins, buildings, vaults, silos, tanks, drop inlets, sewers, service pipes, underdrains, foundation drains, and other similar features that may be encountered in the Work.
199. Subbase: A Course of specified material of specified thickness between the Subgrade and a Base.
200. Subcontractor: An Entity that the Contractor enters into a subcontract with to perform a portion of the Work.
201. Subgrade: The top surface of completed earthwork on which Subbase, Base, Surfacing, Pavement, or a Course of other Material is to be placed.
202. Submittals – Submittals are documents required by the Contract Documents to be submitted to the Owner for review. Submittals may include, but are not limited to, Shop Drawings, Stamped Working Drawings, Product Data, Samples, or schedule of construction events.

203. Substantial Completion: A state of Contract performance that is less than full performance of all the Work required by the Contract Documents, but is nonetheless sufficiently complete to permit occupancy or use of the entire Project for its intended purpose, and where the omissions and deviations from full performance are inadvertent and unintentional, do not impair the Work as a whole, can be easily remedied, and may be paid for by reimbursable costs to or deductions from the Guaranteed Maximum Price of the Contract Amount.
204. Substructure: Those parts of a Structure which support the Superstructure, including bents, piers, abutments, and integrally built wingwalls, up to the surfaces on which bearing devices rest. Substructure also includes portions above bearing surfaces when those portions are built integrally with a Substructure unit (e.g., backwalls of abutments). When Substructure and Superstructure elements are built integrally, the division between Substructure and Superstructure is considered to be at the bottom soffit of the longitudinal or transverse beam, whichever is lower. Culverts and rigid frames are considered to be entirely Substructure.
205. Superstructure: Those parts of a Structure above the Substructure, including bearing devices.
206. Supplementary Conditions – A portion of the Contract Documents that is typically applicable to a specific Project that may modify the Specifications, impose additional requirements applicable to the specific Project, or both.
207. Surety: An entity providing a Performance Bond, Payment Bond, Warranty or Maintenance Bond, or any combination thereof.
208. Surfacing: The Course or Courses of material on the Traveled Way, auxiliary lanes, Shoulders, or parking areas for vehicle use.
209. Technical Specifications: Requirements of a technical nature particular to the Project and included in the Specifications.
210. Theft: Includes the loss of Work or portions of Work that are lost or stolen or otherwise unaccounted for from the Project Site or from Materials or fabrication locations.
211. Ton: One short ton of 2000 pounds (Tn).
212. Topsoil: Soil ready for use in a planting bed.
213. Traffic Lane: That part of the Traveled Way marked for moving a single line of vehicles.

214. Traveled Way: That part of the Highway for moving vehicles, exclusive of auxiliary lanes, berms and Shoulders.
215. Typical Section: That Cross Section established by the Plans which represents in general the lines to which the Contractor shall work in the performance of the Contract.
216. Unilateral Change Order - the method by which the Owner approves changes to compensation or Contract Time for Changed or Extra Work performed by the Contractor when no agreement on adjustment to the compensation or Contract Time has been reached between the Owner and Contractor.
217. Unit Price: The dollar amount of the GMP to do a particular portion of Contract Work when such prices are required by the Contract Documents.
218. Unsuitable Material: In-situ or Project Site soil that is unsuitable as foundation or subgrade materials because of density, moisture content, organic content, debris, chemicals, toxic mater, plasticity, presence of frozen material, or gradation; and soil (Project Site or imported) that is not suitable as fill or backfill because it does not meet the requirements of the Contract Documents Frozen material, or material that contains organic matter, muck, humus, peat, sticks, debris, chemicals, toxic matter, or other deleterious materials not normally suitable for use in earthwork.
219. Utility: A line, facility or system for producing, transmitting, or distributing communications, power, electricity, heat, gas, oil, water, steam, waste water, or storm water, or any other similar commodity that directly or indirectly services the public. The term "utility" also shall mean the utility company, district, or cooperative, including any wholly owned or controlled subsidiary thereof, which provides utility services.
220. Vandalism – Vandalism includes damage to or destruction of the Work or portions of the work that remain on the Project Site resulting from criminal mischief, arson, or other criminal or illegal behavior.
221. Wetlands: Areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, vegetation typically adapted for life in saturated Soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.
222. Work: All Material, labor, tools, Equipment, and all appliances, machinery, systems, transportation, and appurtenances necessary to properly perform and complete the scope of work and fulfill the

obligations set forth in the Contract Documents, and such additional items not specifically indicated or described which can be Reasonably Inferred as belonging to the item described or indicated and as required by good practice to provide a complete, functioning, and satisfactory Project.

223. Working Day: Any and every Day shown on the calendar, excluding Saturdays, Sundays and City of Portland legal holidays, synonymous with “workday.

224. Working Drawings: Shop Drawings, As-Builts, and other Submittals not furnished by the Owner, that the Contractor is required to submit to the Owner’s Representative.

#### 1.04 ABBREVIATIONS

##### A. General

The following are meanings of abbreviations used in Specifications, on the Plans, and in other Contract Documents. Other abbreviations and meanings of abbreviations may be in the individual Sections of the Specifications to which they apply.

- |     |        |  |
|-----|--------|--|
| 1.  | AA     | Aluminum Association   |
| 2.  | AABC   | Associated Air Balance Council                                     |
| 3.  | AAMA   | American Architectural Manufacturers Association                   |
| 4.  | AAN    | American Association of Nurserymen                                 |
| 5.  | AAR    | Association of American Railroads                                  |
| 6.  | AASHTO | American Association of State Highway and Transportation Officials |
| 7.  | ABC    | Associated Builders and Contractors, Inc.                          |
| 8.  | ABMA   | American Bearing Manufacturers’ Association                        |
| 9.  | AC     | Asphalt Concrete   |
| 10. | ACI    | American Concrete Institute  |
| 11. | ACWS   | Asphalt Concrete Wearing Surface                                   |
| 12. | ADA    | Americans with Disabilities Act                                    |
| 13. | ADC    | Air Diffusion Council  |

- |     |        |   |
|-----|--------|---|
| 14. | A/E    | Architect/Engineer  |
| 15. | AEIC   | Association of Edison Illuminating Companies                                    |
| 16. | AGA    | American Gas Association  |
| 17. | AGC    | Associated General Contractors of America                                       |
| 18. | AGMA   | American Gear Manufacturers' Association  |
| 19. | AHRI   | Air-Conditioning, Heating, and Refrigeration Institute                          |
| 20. | AI     | Asphalt Institute   |
| 21. | AIA    | American Institute of Architects  |
| 22. | AISC   | American Institute of Steel Construction  |
| 23. | AISI   | American Iron and Steel Institute   |
| 24. | AITC   | American Institute of Timber Construction                                       |
| 25. | ALS    | American Lumber Standards   |
| 26. | AMCA   | Air Movement and Control Association  |
| 27. | ANSI   | American National Standards Institute   |
| 28. | APA    | The Engineered Wood Association   |
| 29. | API    | American Petroleum Institute  |
| 30. | APWA   | American Public Works Association   |
| 31. | ARA    | American Railway Association  |
| 32. | AREA   | American Railway Engineering Association  |
| 33. | ASA    | Acoustical Society of America   |
| 34. | ASABE  | American Society of Agricultural and Biological Engineers                       |
| 35. | ASCE   | American Society of Civil Engineers   |
| 36. | ASHRAE | American Society of Heating, Refrigerating and Air Conditioning Engineers, Inc. |
| 37. | ASME   | American Society of Mechanical Engineers  |
| 38. | ASNT   | American Society for Nondestructive Testing                                     |



39.	ASSE	American Society of Sanitary Engineering
40.	ASTM	ASTM International
41.	ATPB	Asphalt-Treated Permeable Base
42.	AWG	American Wire Gauge
43.	AWI	Architectural Woodwork Institute
44.	AWPA	American Wood Protection Association
45.	AWPI	American Wood Preservers' Institute
46.	AWS	American Welding Society
47.	AWWA	American Water Works Association
48.	BES	Bureau of Environmental Services
49.	BDS	Bureau of Development Services
50.	BHMA	Builders Hardware Manufacturers' Association
51.	BPS	Bureau of Planning and Sustainability
52.	CABO	Council of American Building Officials
53.	CAGI	Compressed Air and Gas Institute
54.	CAGT	Certified Aggregate Technician
55.	CAT-I	Certified Asphalt Technician I
56.	CAT-II	Certified Asphalt Technician II
57.	CBM	Certified Ballast Manufacturer
58.	CBR	California Bearing Ratio
59.	CCB	Construction Contractors Board
60.	CCD	Construction Change Directive
61.	CCT	Concrete Control Technician
62.	CDA	Copper Development Association
63.	CDT	Certified Density Technician

64.	CEBT	Certified Embankment and Base Technician
65.	CFR	Code of Federal Regulations
66.	CGA	Compressed Gas Association
67.	CI	Cast Iron
68.	CISPI	Cast Iron Soil Pipe Institute
69.	CIV	Cast Iron Valve Box and Cover
70.	CMAA	Crane Manufacturers' Association of America
71.	CMDT	Certified Mixture Design Technician
72.	CM/GC	Construction Manager/General Contractor
73.	CO	Change Order
74.	COR	Change Order Request
75.	CPF	Composite Pay Factor
76.	CPL	Construction Products List
77.	CQC	Contractor Quality Control
78.	CRSI	Concrete Reinforcing Steel Institute
79.	CS	Commercial Standard
80.	CSA	Canadian Standards Association
81.	CSI	Construction Specifications Institute
82.	CSTT	Concrete Strength Testing Technician
83.	DBE	Disadvantaged Business Enterprise
84.	DEQ	Oregon Department of Environmental Quality
85.	DFPA	Douglas Fir Plywood Association
86.	DHS	Oregon Department of Human Services
87.	DI	Ductile Iron
88.	DIPRA	Ductile Iron Pipe Research Association

- 89. D/M/W/ESB/SDVBE Disadvantaged Business Enterprise, Minority-Owned Business or Women-Owned Business, an Emerging Small Business or service-disabled veteran business
- 90. DOGAMI Department of Geology and Mineral Industries, State of Oregon
- 91. DSL Division of State Lands, State of Oregon
- 92. EAC Emulsified Asphalt Concrete
- 93. EC Erosion Control
- 94. EIA Electronic Industries Alliance
- 95. EPA U.S. Environmental Protection Agency
- 96. ESC Erosion and Sediment Control
- 97. ESCP Erosion and Sediment Control Plan
- 98. ETL Electrical Test Laboratories
- 99. ETP Electronic Testing Laboratory
- 100. FCC Federal Communications Commission
- 101. FDA Food and Drug Administration
- 102. FEMA Federal Emergency Management Agency
- 103. FHWA Federal Highway Administration, U.S. Department of Transportation
- 104. FIPS Federal Information Processing Standards
- 105. FM FM Global (Factory Mutual)
- 106. FO Field Order
- 107. FPS Fluid Power Society
- 108. FSS Federal Specifications and Standards, General Services Administration
- 109. GA Gypsum Association
- 110. GANA Glass Association of North America
- 111. GCSP General Construction Safety Provisions

112. GMP	Guaranteed Maximum Price
113. GSA	General Services Administration
114. HI	Hydraulic Institute
115. HMA	Hot Mixed Asphalt Concrete
116. HMI	Hoist Manufacturers' Institute
117. IAPMO Officials	International Association of Plumbing and Mechanical Officials
118. IBC	International Building Code
119. ICBO	International Conference of Building Officials
120. ICC	International Code Council
121. ICEA	Insulated Cable Engineers' Association
122. IEEE	Institute of Electrical and Electronics Engineers, Inc.
123. IES	Illuminating Engineering Society
124. IESNA	Illuminating Engineering Society of North America
125. IFC	International Fire Code
126. IFI	Industrial Fasteners Institute
127. IGCC	Insulating Glass Certification Council
128. IGMA	Insulating Glass Manufacturer's Alliance
129. IMC	International Mechanical Code
130. IMSA	International Municipal Signal Association
131. INDA	Association of the Nonwoven Fabrics Industry
132. IPC	International Plumbing Code
133. IPCE	International Power Cable Engineers Association
134. ISA	Instrumentation, Systems, and Automation Society
135. ISO	International for Standards Organization
136. ITE	Institute of Traffic Engineers

137. ITL	Independent Testing Laboratory
138. JHA	Job Hazard Analysis
139. JIC	Joint Industry Conferences of Hydraulic Manufacturers
140. JMF	Job Mix Formula
141. JSA	Job Safety Analysis
142. LU	Land Use
143. LUR	Land Use Review
144. MDFT	Mil Dry Film Thickness
145. MFTP	Manual of Field Test Procedures (ODOT)
146. MIL	Military Specifications
147. MMA	Monorail Manufacturers' Association
148. MSC	Minor Structure Concrete
149. MSE	Mechanically Stabilized Earth retaining wall
150. MSPCP	Manufacturing Standards for Precast Concrete Products
151. MSS	Manufacturer's Standardization Society
152. MUTCD	Manual of Uniform Traffic Control Devices for Streets and Highways, FHWA, US Department of Transportation
153. NAAMM	National Association of Architectural Metal Manufacturers
154. NACE	National Association of Corrosion Engineers, International
155. NAPA	National Asphalt Pavement Association
156. NBGQA	National Building Granite Quarries Association
157. NBS	National Bureau of Standards
158. NCMA	National Concrete Masonry Association
159. NEBB	National Environmental Balancing Bureau
160. NEC	National Electrical Code

161. NECA	National Electrical Contractors Association
162. NEMA	National Electrical Manufacturers' Association
163. NESC	National Electrical Safety Code
164. NETA	International Electrical Testing Association
165. NFPA	National Fire Protection Association
166. NGVD	National Geodetic Vertical Datum
167. NHLA	National Hardwood Lumber Association
168. NICET Technologies	National Institute for Certification in Engineering
169. NIST	National Institute of Standards and Technology
170. NLMA	National Lumber Manufacturer's Association
171. NMFS	National Marine Fisheries Services, a part of the National Oceanic and Atmospheric Administration
172. NOAA	National Oceanic and Atmospheric Administration
173. NPDES	National Pollutant Discharge Elimination System
174. NPS	Nominal Pipe Size (dimensionless)
175. NRCA	National Roofing Contractors Association
176. NRTL	Nationally Recognized Testing Laboratories
177. NSF	NSF International
178. NSPE	National Society of Professional Engineers
179. NTMA	National Terrazzo and Mosaic Association
180. NTP	Notice to Proceed
181. NUCA	National Underground Contractors Association
182. NWMA	National Woodwork Manufacturers Association
183. NWWDA	National Wood Window and Door Association
184. OAR	Oregon Administrative Rules

185. OCIP	Owner Controlled Insurance Program
186. OD	Outside Diameter
187. ODA	Oregon Department of Agriculture
188. ODF	Oregon Department of Forestry
189. ODFW	Oregon Department of Fish and Wildlife
190. ODOT	Oregon Department of Transportation
191. OHA	Oregon Health Authority
192. OR-OSHA Administration	Oregon Occupational Safety and Health Administration
193. ORS	Oregon Revised Statutes
194. OSHA State)	Occupational Safety and Health Act (both Federal and State)
195. PBOT	Portland Bureau of Transportation
196. PCA	Portland Cement Association
197. PCI	Precast/Prestressed Concrete Institute
198. PCP	Pollution Control Plan
199. PEI	Porcelain Enamel Institute
200. PF	Pay Factor of a constituent
201. PLS	Professional Land Surveyor
202. PMBB	Plant Mixed Bituminous Base
203. PO	Purchase Order
204. PPI	Plastic Pipe Institute
205. PP&R	Portland Parks and Recreation
206. PS Commerce	Product Standards Section-U.S. Department of Commerce
207. PTE	Professional, Technical and Expert
208. PTI	Post Tensioning Institute

209. PUC	Public Utility Commission
210. PWB	Portland Water Bureau
211. QA	Quality Assurance
212. QC	Quality Control
213. QCT	Quality Control Technician
214. QL	Quality Level
215. RAP	Reclaimed Asphalt Concrete Pavement
216. RFI	Request for Information
217. RFP	Request for Proposal
218. RMA	Rubber Manufacturers' Association
219. RUS	Rural Utilities Service
220. SAE	Society of Automotive Engineers
221. SAMA	Scientific Apparatus Makers Association
222. SDI	Steel Deck Institute
223. SDI	Steel Door Institute
224. SDWA	Safe Drinking Water Act
225. SI	International System of Units (Système Internationale)
226. SJI	Steel Joist Institute
227. SMACNA	Sheet Metal and Air Conditioning Contractors National Association
228. SPI	Society of the Plastics Industry
229. SRCM	Soil and Rock Classification Manual (ODOT)
230. SSPC	The Society for Protective Coatings
231. SSSHP	Site Specific Safety and Health Plan
232. STI/SPFA	Steel Tank Institute/Steel Plate Fabricators Association



233. SWI	Steel Window Institute
234. T	Tolerances, AASHTO Test Method
235. TBD	To Be Determined
236. TBM	Temporary Bench Mark
237. TCA	Tile Council of North America
238. TCP	Traffic Control Plan
239. TEMA	Tubular Exchanger Manufacturers' Association
240. TIA	Telecommunications Industry Association
241. TM	Test Method (ODOT)
242. Tn	Ton
243. TV	Target Value
244. UBC	Uniform Building Code
245. UFC	Uniform Fire Code
246. UL	Underwriters Laboratories Inc.
247. UMC	Uniform Mechanical Code
248. UPC Oregon)	Uniform Plumbing Code (as adopted by the State of
249. USASI	United States of America Standards Institute
250. USBR	U.S. Bureau of Reclamation
251. USC	United States Code
252. USDC	US Department of Commerce
253. WAQTC	Western Alliance for Quality Transportation Construction
254. WCLIB	West Coast Lumber Inspection Bureau
255. WEF	Water Environment Foundation
256. WI	Wood Institute
257. WWPA	Western Wood Products Association

## 1.05 INSTRUCTIONS REGARDING PROPOSING

### A. Examination of Contract, Site of Work, and Subsurface Data:

1. Before submitting the GMP, The Proposer shall carefully examine the Project Site and adjoining Work areas (including the material sites) of the proposed Work, the scope, Specifications, Plans, Permit applications, Permits, Addenda, and Contract Documents. The submittal of the GMP shall constitute confirmation that the Proposer has examined the Project Site and Contract Documents, finds the Contract Documents to be sufficiently detailed and accurate to enable the Proposer to properly perform the Work, and understands the conditions to be encountered in performing the Work and all requirements of the Contract Documents.
2. The Proposer is responsible for loss or unanticipated costs suffered by the Proposer because of the Proposer's failure to fully examine the Project Site or become fully informed about all conditions of Work, or failure to request clarification of Contract Documents the Proposer believes to be erroneous or incomplete.
3. The Proposer shall determine the means, methods, Materials, labor, and Equipment required to perform the Work and shall reflect in their cost in the GMP prices. Any costs exceeding those anticipated by the Proposer will not entitle the Proposer to additional compensation beyond those available within the GMP.
4. The Owner is under no obligation to search its records for other data that may or may not be helpful for the Proposer's inspection, and no claim for additional compensation may be made if such additional test data is not provided by the Owner.
5. With regard to any Owner-supplied data, the Proposer acknowledges and agrees that:
  - a. To the extent that Owner-supplied data is included in the Contract Documents, it is solely for the convenience of the Proposer and shall not relieve the Proposer of any risk or any duty to make its own examinations and investigations as required by this Article or any other responsibility under the Contract Documents and such data is not part of the Contract Documents.
  - b. The Owner warrants that such Owner-supplied data represents with reasonable accuracy the conditions and materials found at the Project Site as known at the time such data was collected. The Owner makes no representation or warranty (expressed or implied) with regard to the conditions, materials, or proportions of materials at any other locations on the Project Site.

- c. The Owner does not represent or warrant that the Owner-supplied data is sufficient or complete, nor that interpretations from the data made by the Owner are correct.
  - d. The Owner assumes no responsibility for conclusions or interpretations made by the Proposer based on any information that the Owner makes available. Statements made by the Owner's Representative during Phase 1 or during negotiations for the GMP or elsewhere are not binding on the Owner and shall not change the Contract Documents unless the Owner confirms the statements in writing.
6. The Proposer acknowledges that it has ascertained the nature and location of the Work, and that it has investigated and assured itself as to the general and local conditions that can affect the Work and its cost. The Proposer also acknowledges that it is satisfied as to the character, the Work and its cost. The Proposer also acknowledges that it is satisfied as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered so far as this information can be reasonably ascertained from an inspection of the Project site, including any Owner-supplied data subject to the limitations of this Article 1.05A. Failure of the Proposer to take these actions will not relieve it of responsibility for properly estimating difficulty and cost of successfully completing the Work, or for proceeding to successfully complete the Work without additional cost to the Owner.
7. The Owner intends the Contract Documents to coordinate with each other to provide for a complete Project. Patent conflicts in the Contract Documents, or obvious omissions, are ones that should have been discovered before submission of a GMP to the Owner by a reasonable person in the Proposer's position if all the Contract Documents had been reviewed. In such a situation, the Proposer has a duty to inquire of the Owner before submitting its GMP about the correct interpretation of the Contract. This permits the Owner to clarify in writing, what is intended by the Contract Documents. Disclosure of subsurface information from the Owner's Representative is solely for the convenience of the Proposer and shall not relieve the Proposer or the Contractor of any risks or of any duty to make his own examinations and investigations as required by this Article or any other responsibility under the Contract.
8. If a Proposer fails to bring a conflict or error to the Owner's attention before it submits the GMP, it has waived its right to additional compensation in the event that the Owner awards a Contract for Phase 2 Work and when the Owner resolves the conflict or error.

9. Coordination among the discrepancy or conflict in the Contract Documents, including but not limited to the order of precedence of Contract Documents, shall be resolved as set forth in Article 1.09. The Owner assumes no responsibility for conclusions or interpretations made by the Proposer based on the information that the Owner makes available. Statements made by Owner representatives at or elsewhere are not binding on the Owner and shall not change the Solicitation Document unless the Owner confirms the statements and changes to all prospective Proposer(s) by written addendum to the Solicitation Document.
10. In the event of a conflict between Codes, industry standards and Reference Specifications, the most stringent requirements apply and Proposer shall submit its GMP based on the most stringent requirements.
11. Failure of the Proposer to consider the forgoing will not relieve it of the responsibility for properly estimating the difficulty and cost of successfully completing the Work, within terms of the Contract.

B. Establishment of the Guaranteed Maximum Price:

1. General. As stated in the RFP, as part of the PTE Contract, the Contractor is to develop a Guaranteed Maximum Price (GMP) for the Work. The GMP is comprised of the CM/GC's Fee as defined by Subparagraph 2 and the Contractor's pre-construction estimate of the reimbursable costs of the Work as defined in Subparagraph 3, below.
2. CM/GC's Fee. The Fee consists of the following items:
  - a. Contractor profit.
  - b. Home office costs, including, but not limited to, general and administrative expense, overhead, and non-direct salaries.
  - c. Salary of any person employed, during the execution of the work, in the home office or in any regularly established branch office. Costs of employees engaged in shops or on the road and in expediting the production or transportation of materials or equipment to the jobsite.
  - d. Cost of capital employees either in plant or expenditures of the work.
  - e. Subsistence, travel and relocation costs for the Contractor's employees.
  - f. Subcontractor Markup. This amount includes any and all costs incurred by the Contractor in soliciting bids, reviewing bids, producing subcontracts, managing and administering its Subcontractors.

- g. D/M/W/ESB/SDVBE Costs: All costs attributable to the Contractor's compliance with the City's D/M/W/ESB/SDVBE Subcontractor and Supplier Plan and Workforce Training and Hiring Program also known as the Community Equity and Inclusion Plan.
- h. Personal property taxes on the Contractor's equipment and construction materials.
- i. Costs for the use of money, including interest on amounts borrowed and on the Contractor's money used in regard to the performance of the Work
- j. Preparation of the Contractor's response to the Request for Proposals.
- k. Cost to repair Vandalism.
- l. Small tools with a value of \$400 or less and disposal items including, but not limited to, gloves, glasses, earplugs, buckets, and other consumables including but not limited to, sawblades, paint brushes, rags and sandpaper that are not incorporated into the Work.
- m. Contractor's Field Office - General and miscellaneous field office, field office maintenance, field office supplies and small materials and supplies incidental to Contractor's use: purchase or rental of, and services related to, field office equipment including but not limited to, fax machines, photocopy machines, computers, two-way radios, pagers, telephones, photography equipment, postage, reproduction, photographs, all bottled water and other equipment or materials.
- n. All costs associated with the Contractor's employees including, but not limited to, project manager and superintendent while not on the Project Site throughout the life of the project.
- o. All Contractor Furnished Insurance and insurance premiums.
- p. All Subcontractor Furnished Insurance and insurance premiums.
- q. Costs and markups, including, but not limited to, profit, overhead, bonding and insurance caused by or associated with the use of Subcontractors.
- r. Entities in the same corporation or subsidiaries of the same corporation, partnerships, or joint ventures as defined as the Proposer in the Request for Proposal, the proposals shall have no markups. The CM/GC fee shall include any costs between these entities.
- s. Markup costs for Self-Performed Work.

- t. Subcontractor payment and performance bonds.
- u. Contractor and Subcontractor warranty bonds.
- v. Any costs due to the fault or negligence of the Contractor, Subcontractors, anyone directly or indirectly employed by any of them, or for whose acts many of them may be liable, including, but not limited to costs for correction of damaged, defective or nonconforming Work.
- w. Prior Costs: All Costs incurred under the Professional, Technical and Expert (PTE) Contract and all costs prior to Notice to Proceed for Phase 2, or Phase 3 activities.
- x. Cost Reduction Proposal Costs: All costs associated with preparing cost reduction proposals, such as providing design estimates, value engineering, constructability options, and other construction management services through the design and construction process for the cost reduction proposal.
- y. Contractor costs paid to Owner, in order to evaluate Contractor Cost reduction Proposal pursuant to Article 1.07F.
- z. All labor and expensed associated with travel and training unless specifically required in the Contract Documents.
- aa. Any other cost relating to the project that is not expressly reimbursable pursuant to Subparagraph 3 below.
- 3. Reimbursable Costs of the Work. The reimbursable costs of the work include the following items:
  - a. Labor Costs
    - 1) The reasonable wages of construction workers, including those of a full-time project superintendent and project manager, directly employed by the Contractor to perform the construction of the Work at the Project Site.
    - 2) The reasonable wages or salaries, and the Contractor's supervisory and administrative personnel when working on the Project at the Project Site with the Owner's agreement.
    - 3) Reasonable and actual costs paid or incurred by the Contractor for payroll taxes, contributions, assessments and benefits required by laws or collective bargaining agreements, and for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays,

vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work above.

- 4) The reasonable wages of personnel dedicated to producing and maintaining the construction schedule, but only that portion of their time required for the Project.

b. Subcontractor Costs

- 1) Subcontractor costs for amounts required to be paid by legally binding subcontracts provided the subcontracts were:
  - a) Approved by the City;
  - b) In accordance with the requirements of this Contract;
  - c) A complete copy of the subcontract is provided to the City upon request; and
  - d) The subcontract is based on a Lump Sum basis or on Unit Price basis or a combination of the two methods unless otherwise approved in writing by the Owner's Representative.

c. Costs of Materials and Equipment

Costs of materials and equipment, including transportation, maintenance, dismantling and removal of supplies, temporary facilities, machinery, and equipment, which are provided by the Contractor at the Project Site and used in the performance of the Work. Rental Costs of machinery and equipment with a value of \$400 or more.

d. Miscellaneous Costs:

- 1) The portion of sales, use or similar taxes imposed by a government authority which are related to the Work and for which the Contractor is liable.
- 2) Contractor's payment and performance bonds.
- 3) Fees and assessments for the plan check, building permit and for other permits, licenses and inspections for which the Contractor is required by the Contract Documents to pay.
- 4) Fees of testing laboratories for first test (retesting will not be reimbursed),

- 5) Tests required by the Contract Documents except those specifically stated to be paid for by the Owner.
- 6) Costs of removal of debris from the site.
- e. Owner's temporary field office: General and miscellaneous field office, field office maintenance and cleaning, field office supplies and small materials and supplies incidental to Owner use: purchase or rental of, and services related to, field office equipment, bottled water and other equipment materials.
- f. Reporting costs: Cost of providing comprehensive monthly project reports and accounting reports throughout the Project.
4. Expression of Reimbursable Costs and Allowance into a Schedule of Values
  - a. The Contractor will take the Reimbursable Costs of the Work, as expressed in Subparagraph 3 above, and develop a Schedule of Values for the purposes of the Owner's payment to the Contractor. The Schedule of Values will show a general itemization of the various parts of the Work to be performed on the project and their associated cost. When all the items are added together, the cost for all the listed items in the Schedule of Values will equal the Reimbursable Costs of the Work.
  - b. The cost for each item on the Schedule shall as listed as either a Lump Sum or as a Unit Price.
  - c. The Owner may choose to have one or more items in the Schedule of Values listed as an Allowance. Any item of Work identified by the Contract Documents as an Allowance shall be included within the Schedule of Values at the cost given by the Owner. Such items shall be identified as Owner Allowance.
5. GMP is for fully functioning facilities at the Project Site.
  - a. The GMP contract includes all costs necessary to build a fully functioning facility as described by the Contract Documents, complete in every detail regardless of the quality or completeness of those Contract Documents. Therefore:
    - 1) The Contractor shall be responsible for providing all materials, equipment, products, and labor to rectify any such omissions without additional cost to the Owner; and
    - 2) The Contractor shall provide the Owner and the Designer with timely notification of any omissions or errors in the Contract



Documents that are necessary to produce a complete and fully functioning facilities so that the Designer and Owner can work with the Contractor to develop details or specifications as required, while attempting to minimize adverse impact on the Contractor.

- b. Costs that cause the GMP to be exceeded, without prior written authorization by the Owner, will not be considered.

## 6. Records

In order to facilitate this process, the Contractor and the Owner agree to make all records, calculations, drawings, and related materials mutually available on an on-going basis. The Designer and Owner shall have full opportunity to view all documents related to this Contract in the offices of the Contractor, and all necessary documents shall be made available to the Owner and Designer at regular meetings at the Owner or Designer offices or at the Project Site upon reasonable notice.

## 7. Termination of Services If Guaranteed Maximum Price (GMP) Contract Not Established

- a. Should the Contractor and the Owner not agree on a GMP, schedule, and an acceptable D/M/W/ESB/SDVBE Subcontractor and Supplier Plan also known as the Community Equity and Inclusion Plan within sixty (60) Days after GMP submissions, except as noted above for allowances that have been provided to the Owner, the Owner may terminate negotiations with and services of the Contractor and close-out the Contract, or the Owner may exercise other options to be negotiated with the Contractor.

## 8. Savings:

- a. Should the Cost of the Work plus the Contractor's fee be less than the GMP as modified by any additive and/or deductive Change Orders (as applied to the Work as a whole), any such positive difference shall be realized as "Savings" to be shared by the Contractor and the Owner at the end of the project.
- b. Final Cost Savings - The Contractor will be paid 25 percent of any Final Cost Savings by Change Order and paid with the Final Payment. The final cost savings paid to the Contractor will be capped at \$6,000,000.
- c. Although it is the intention of the Owner to save money on the project if at all possible, the Owner reserves the right to work with the CM/GC to use the Owner's portion of the anticipated savings from Cost

Reduction Proposals to build additional necessary components of the project.

9. Discounts, Rebates, and Refunds:
  - a. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, if paid by the Owner by the discount date, and the Contractor shall take all actions in order that the savings can be realized.
  - b. Amounts that accrue to the Owner shall be credited to the Owner as a deduction from the Contractor provided GMP.

C. Interpretation of Quantities in Schedule of Values:

1. The Owner reserves the right to increase or decrease the amount of any class, item, or portion of the Work and to delete any schedule line items in their entirety after the Contract is Awarded. Those changes shall not be considered as a waiver of any condition of the Contract nor shall such changes invalidate any of the remaining provisions of the Contract Documents.
2. Quantities appearing in the Contract Documents for the GMP are approximate. The Owner does not warrant that the actual individual items, amount of Work or quantities will correspond to those shown in the Contract Documents for the GMP. Quantities of Work to be performed and Materials or Equipment to be furnished may each be increased, decreased or omitted.

D. Subsurface Investigations and Data

1. If the Owner has conducted subsurface or geological investigations of the proposed Project Site, the results of the investigations may be included in written reports. If the reports have been prepared, the copies will be made available. If the Owner has retained subsurface samples, they will also be made available for inspections. Proposers may make arrangements for viewing of the samples through the Owner's Representative.
2. The availability of subsurface information from the Owner is solely for the convenience of the Proposer and shall not relieve the Proposer of any risk or duty to make examinations and investigations as required by Article 1.05A or other responsibility of the Contract Documents. It is mutually agreed to by all parties that:
  - a. The subsurface investigations made by the Owner are for the purpose of obtaining data for planning and design of the Project.

- b. The data for individual test boring logs apply only to that particular boring and is not intended to be conclusive:
  - 1) As to the character of any material between or around test borings; or
  - 2) That the ground at the location of the boring has been physically disturbed or altered after the boring was made; or
  - 3) That the moisture conditions and indicated water tables will not vary substantially from those found at the time the boring was made.
- c. If Proposer uses this information in preparation of the GMP, it is used at its own risk, and Proposer is responsible for all conclusions, deductions, and interferences drawn from this information. The Owner makes no representation or warranty express or implied that the Owner's interpretations of the data are correct.

E. Assignment of Claim Relief:

- 1. The Contractor hereby assigns to the Owner any Claim for relief that the Contract has or may have in the future by reason of violation of 15 USC §§ 1-15 or ORS 646.725 or ORS 646.730.

F. Non-Collusion Affidavit

- 1. The Proposer shall sign an Affidavit of Non-Collusion contained elsewhere in the GMP Documents that affirms that the Proposer has arrived at the prices and amount of its GMP independently, that neither the prices nor the amount have been disclosed to any other firm or person, that no attempt has been made to induce any person to refrain from proposing for the Work described by the GMP Documents, that the GMP has been made in good faith and not pursuant to any agreement with any other firm or person to submit a complementary or other noncompetitive GMP and that the Proposer is not currently under investigation by any governmental agency and has not in the last four years been convicted or found liable for any act prohibited by State or Federal law involving conspiracy or collusion with respect to proposing on any public Contract, unless that conviction is disclosed so as to permit the Owner to determine whether the Proposer is a responsible Proposer under Oregon law. Failure to sign the Affidavit shall render the GMP nonresponsive and the Proposer ineligible for Contract Award.

## 1.06 AWARD OF THE CONTRACT

A. Award of Contract:

1. The Owner's Procurement Rules govern the submission of Proposals and Award of any Contract by the Owner and are incorporated herein by reference.

B. Restrictions on Commencement of Work:

1. Contractor.
  - a. Shall not begin Work until the applicable Notice to Proceed has been issued by the Owner.
  - b. Before commencing Work, the Contractor shall file with the Construction Contractors Board, and maintain in full force and effect, the separate public works bond required by ORS 279C.836 unless otherwise exempt. The Contractor shall also include in every subcontract a provision requiring the Subcontractor to have a public works bond filed with the Construction Contractors Board before commencing the Work, unless otherwise exempt
2. The Phase 2, Stage 1 Notice to Proceed (P2NTP1) will not be given until the Contractor provides Owner with all documentation necessary for performance under the Contract Documents. If the documentation complies with the Contract requirements, Owner will issue the Notice to Proceed within 75 Days. The Owner may delay the issuance of the NTP1 beyond 75 Calendar Days if all required easements or permits have not been obtained, if necessary, utility relocation, construction or reconstruction has not been completed by Owner or Contractor, or for Owner's convenience. If issuance of the Notice to Proceed is delayed for these reasons, Owner shall notify Contractor of the delay.
3. The Phase 2, Stage 2 Notice to Proceed (P2NTP2) will not be given until the Contractor provides Owner with all documentation necessary for performance under the Contract Documents, including, but not limited to, all necessary signatures on Contract Documents, a Performance and Payment Bond, and proof of all required insurance. After receipt of all required documentation Owner will review the submitted documentation for conformance with Contract requirements. If the documentation conforms to Contract Documents, Owner will issue the Phase 2, Stage 2 Notice to Proceed within 75 Calendar Days after receipt of all required documentation. If the documentation does not conform, Owner will notify Contractor as soon as possible so that proper documentation can be provided.
4. The Phase 3, Stage 1 Notice to Proceed (P3NTP1) will not be given until the Contractor provides Owner with all documentation necessary for performance under the Contract Documents. If the documentation conforms to the Contract requirements, Owner will issue the Notice to Proceed within 75 Days. The Owner may delay the issuance of the

NTP1 beyond 75 Calendar Days if all required easements or permits have not been obtained, if necessary utility relocation, construction or reconstruction has not been completed by Owner or Contractor, or for Owner's convenience. If issuance of the Notice to Proceed is delayed for these reasons, Owner shall notify Contractor of the delay.

5. The Phase 3, Stage 2 Notice to Proceed (P3NTP2) will not be given until the Contractor provides Owner with all documentation necessary for performance under the Contract Documents, including, but not limited to, all necessary signatures on Contract Documents, a Performance and Payment Bond, and proof of all required insurance. After receipt of all required documentation Owner will review the submitted documentation for conformance with Contract requirements. If the documentation conforms to Contract Documents, Owner will issue the Phase 2, Stage 2 Notice to Proceed within 75 Calendar Days after receipt of all required documentation. If the documentation does not conform, Owner will notify Contractor as soon as possible so that proper documentation can be provided.

## 1.07 SCOPE OF THE WORK

### A. Purpose of the Contract:

1. The Contract Documents govern the Work to be done, set forth the relative responsibilities of the Owner and Contractor, and establish the method by which changes in the Contract Documents are made. The Contractor's obligations shall include without limitation to the following:
  - a. The Contractor shall furnish all Materials, Equipment, labor, transportation, and incidental Work required to complete the Work in accordance with the Contract Documents.
  - b. The Contractor shall perform the Work according to the lines, grades, Typical Sections, dimensions and other details shown the Plans as modified by written order, or as directed by the Owner's Representative.
  - c. The Contractor shall perform all Work determined by the Owner's Representative to be necessary to complete the Project.
  - d. The Contractor shall contact the Owner's Representative for any necessary clarification or interpretation of the Contract Documents.
2. Some details of the Work may be found in only one location in the Contract Documents. Therefore, the Contractor must review all

portions of the Contract Documents in order to know the scope of the Work.

3. The Owner has adopted standards that may be applicable to the Plans and Specifications in the Contract Documents. Any reference in the Contract Documents refers to the ones in effect at the time that the GMP was accepted by the Owner.

**B. Communications Regarding the Work**

1. If the Contractor has a question about a specific portion of the Work, it shall submit a Request for Information (RFI) to the Owner's Representative. The purpose of the RFI is to obtain information, clarify contract requirements or verify information previously received.
2. The response to the RFI will come from the Owner's Representative and may take the form of a Proposal Request (PR). The PR is not a Change Order nor a direction to proceed with changes to the Work, but simply a request to the Contractor for information on how a proposed change to the Work might affect both the Contract Amount and the Contract Time.
3. Upon receipt of a PR, the Contractor shall respond in a timely fashion with a Charge Order request (COR). The COR shall show whether the proposed change will increase or decrease the Contract Amount and the effect, if any, that it will have on the Contract Time.

**C. Owner-Required Changes in the Work:**

1. Changes to the Contract Documents, quantities or details of construction are inherent in the nature of construction and may be necessary or desirable during the course of Project construction. Without impairing the Contract, the Owner reserves the right to require changes it deems necessary or desirable within the scope of the Project.
2. Changed or Extra Work may be compensated in accordance with Articles 1.15 and 1.16. If Parties reach mutual agreement on compensation for the Changed or Extra Work, the parties will execute a written Change Order that sets forth their agreement pursuant to Article 1.16B.
3. When Changed or Extra Work is necessary, but the Owner and Contractor cannot reach agreement on the terms of a Change Order, the Owner will direct such Changed or Extra Work changes by issuing a Construction Change Directive (CCD) or a Unilateral Change Order. The CCD or a Unilateral Change Order may result in additions, deletions or other revisions to the Work to be performed. Upon receipt

of a CCD or a Unilateral Change Order, the Contractor shall promptly follow the direction given in the CCD or Unilateral Change Order and proceed with the Changed or Extra Work. Payment for Changed or Extra Work shall be made as specified in Article 1.16.

4. If the Contractor believes that following the advice, direction or instruction provided by a Field Order will result in additional costs, require additional compensation or require additional Contract Time, is contrary to the requirements of the Contract Documents or that the Field Order requires the performance of Changed or Extra Work the Contractor shall follow the requirements of Articles 1.16 and 1.17A, regarding Claims for additional compensation and requests for additional Contract Time.

D. Differing Site Conditions:

1. The Contractor shall promptly, and before the conditions are disturbed, give written Notice to the Owner's Representative of:
  - a. Pre-existing subsurface or latent physical conditions at the site which differ materially from those indicated in this Contract Documents, or those of which the Contractor should reasonable be aware based on constructive notice through information provided in the Contract Documents, or;
  - b. Pre-existing unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent in the Work of the character provided for in the Contract.
2. After receipt of the Notice, the Owner's Representative will investigate the conditions encountered by the Contractor promptly. If the Owner's Representative finds that the conditions are materially different and cause a material increase or decrease in the Contractor's cost of, or the time required for, performing any part of the Work under the Contract Documents, whether or not changed as a result of the conditions, an Equitable Adjustment to the Contract will be made under this clause and the Contract modified in writing accordingly. If the parties are unable to agree, the Owner's Representative will determine the amount of the Equitable Adjustment and adjust the compensation or Contract Time. If the Contractor disagrees with that decision, it may file a claim pursuant to Article 1.18. If the Owner's Representative finds that differing site conditions do not exist, that decision is final and binding upon the Contractor.
3. Contractor has waived its right to bring a Claim for additional compensation or Contract Time for encountering a differing site condition unless the Contractor has given the Notice required by

Article 1.07D.1 above. No request by the Contractor for additional compensation or additional Contract Time as a result of a differing site condition will be allowed if the request is made after Final Payment under this Contract.

E. Environmental Pollution Changes and Natural Resource Preservation Requirements:

1. ORS 279C.525 will apply to any increases in the scope of the Work required as a result of Environmental Laws or natural resources Laws enacted or amended after the submission of the GMP for the Contract.
2. Contractor shall comply with the requirements set forth in ordinance, rules or regulations identified in Article 1.12B.

F. Changed or Extra Work:

1. Owner may at any time, by written order through a Construction Change Directive (CCD), a Unilateral Change Order, or a Change Order require Contractor to perform Changed or Extra Work. It is the Contractor's responsibility to notify the Surety of such order if the cost of the Changed or Extra Work exceeds 25 percent of the total original Contract Amount and provide the Owner with an updated copy of its Performance and Payment Bond within 15 Days of the date indicated on the Change Order or Unilateral Change Order.
2. When so ordered in writing by the Owner's Representative through a CCD, Unilateral Change Order or Change Order or fully executed COR, Contractor shall proceed with the performance of any Changed or Extra Work regardless of whether an agreement has been reached on how that performance affects Contract Amount or Contract Time. If the Contractor refuses to perform the Changed or Extra Work, this is a material breach of Contract Documents and Owner shall have all remedies available to it at Law and equity for that breach. Contractor shall have no right to additional Contract Time for delay incurred by Contractor's refusal to perform because the price, time, or both, has not yet been agreed upon. Contractor's remedy is, instead, to proceed as required by Article 1.18A.
3. When the Owner's Representative is contemplating Changed or Extra Work, a proposal request for Changed or Extra Work together with a solicitation for a quotation for the performance of the Changed or Extra Work will be issued to the Contractor, in writing, by the Owner's Representative.
  - a. The Contractor shall submit a price quotation and proposal for performing the Changed or Extra Work within 10 Days unless the



Owner agrees upon a longer period of time in writing. The Contractor shall submit data to substantiate both the cost of performing the Work and any additional Contract Time that may be requested.

- b. The Contractor's delay in submitting a price quotation and proposal shall not, in and of itself, extend the Contract Time. If the Contractor is unable to prove that the Changed or Extra Work will cost additional money or is unable to substantiate that it requires additional Contract Time, Contractor has waived any Claim it might have to either Contract Time or additional money after the decision to proceed with the Work has been made by Owner and communicated to Contractor
- c. Disputed Work – The Contractor may dispute any part of a Change Order, written order, or an oral order from the Owner's Representative in accordance with Article 1.18.

G. Cost Reduction Proposals:

- 1. The Contractor may submit written proposals to the Owner's Representative that modify Plans, Specifications, or other Contract Documents for the sole purpose of reducing the total cost of construction or adding value to the Project. Unless otherwise agreed to in writing by the Owner, a proposal that is solely or primarily a proposal to reduce estimated quantities or delete Work is not eligible for consideration as a cost reduction proposal or value-added proposal. Such reductions or deletions shall instead be submitted through a Change Order Request.
- 2. Proposal Requirements:
  - a. The Owner will not accept a proposal that impairs essential functions or characteristics of the Project including but not limited to service life, economy of operation, ease of maintenance, designed appearance, or design and safety standards.
  - b. To conserve time and funds, the Contractor may first submit a written request for a feasibility review by the Owner's Representative. The request should contain a description of the proposal together with a rough estimate of anticipated dollar and time savings. The Owner's Representative will, within a reasonable time, advise the Contractor in writing whether or not the proposal would be considered by the Owner, should the Contractor elect to submit a detailed cost reduction proposal.
  - c. A detailed proposal shall include without limitation the following information:

- 1) A description of existing Contract requirements for performing the Work and the proposed change including the effects of the change upon constructability and project schedule;
  - 2) The Contract items of Work affected by the proposed change, including any quantity variation caused by the proposed change;
  - 3) Pay Items or Schedule of Values affected by the proposed change including any quantity variations;
  - 4) A detailed cost estimate for performing the Work under the existing Contract and under the proposed change. Cost estimates shall be based on a force account payment basis. Costs of re-design, which are incurred after the Owner has accepted the proposal, will be included in the cost of proposed work; and
  - 5) A date by which the Owner's Representative must accept the proposal in order to accept the proposed change without impacting the Contract Time or cost reduction amount.
- d. Continuing to Perform Work: The Contractor shall continue to perform the Work according to Contract requirements until the issuing of a Change Order incorporating the cost reduction proposal. If the Owner fails to issue a Change Order by the date specified in the proposal, the proposal shall be deemed rejected.
- e. Consideration of Proposal: The Owner is not obligated to consider any cost reduction proposal. The Owner will not be liable to the Contractor for failure to accept or act upon any cost reduction proposal submitted. The Owner will determine in its sole discretion whether to accept a proposal as well as the estimated net savings in construction costs from the adoption of all or any part of the proposal.
- 1) In determining the estimated net savings, the Owner's Representative may disregard the Schedule of Items or Schedule of Values. The Owner's Representative will establish prices that represent a fair measure of the value of Work to be performed or to be deleted as a result of the cost reduction proposal.
  - 2) In determining the value-added benefits, the Owner's Representative may consider reduction in life cycle costs, time saving to the Project or other value-added benefits as a result of the proposal.
- f. Sharing Investigation Costs: As a condition for considering a Contractor's cost reduction proposal, the Owner reserves the right to

require the Contractor to share in the Owner's costs of investigating the proposal. If the Owner exercises this right, the Contractor shall provide written acceptance of the condition to the Owner's Representative. Such acceptance will authorize the Owner to deduct its share of investigation costs from payments due or that may become due to the Contractor under the Contract.

g. Acceptance of Proposal Requirements:

If the Contractor's cost reduction proposal is accepted in whole or in part, acceptance will be made by a Change Order that will include without limitation the following:

- 1) Statement that the Change Order is made in accordance with these General Conditions;
- 2) Revised Contract Documents including revised Plans and Specifications, if applicable, that reflect all modifications necessary to implement the approved cost reduction or value-added measures;
- 3) Any conditions upon which the Owner's approval is subject;
- 4) Estimated net savings in construction costs attributable to the approved cost reduction measures; and
- 5) A payment provision pursuant to which the Contractor will be paid 25 percent of the estimated net savings amount as full and adequate consideration for performance of the Work of the Change Order.

h. The Contractor's cost of preparing the cost reduction proposal and the Owner's costs of investigating the proposal, including any portion paid by the Contractor, will be excluded from determination of the estimated net savings in construction costs. Costs of re-design, which are incurred after the Owner has accepted the proposal, will be included in the cost of the Work attributable to cost reduction measures.

i. If the Owner accepts the proposal, the Change Order that authorizes the cost reduction or value-added measures will also address any Contract Time adjustment.

j. Right to General Use: Once submitted, the proposal becomes the property of the Owner. The Owner reserves the right to adopt the for general use without additional compensation to the Contractor when it determines that a proposal is suitable for application to other contracts.

## 1.08 ELECTRONIC DATA

- A. Data may be furnished by Owner to Contractor in an electronic format. Files in electronic media format including but not limited to text, data, and graphics are furnished for the convenience of the Contractor. Because electronic data is easily changed, the Contractor shall rely on the printed data given by Owner instead of electronic data. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the printed copies, the printed copies govern.
- B. When transferring documents into an electronic media format, the Owner makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the Owner.

## 1.09 CONTROL OF WORK

- A. Authority of the Owner's Representative:
  - 1. The Owner's Representative's decisions will be final, binding and conclusive on the Contractor on all questions that arise regarding the quantity of Materials and Work, the quality of Materials and Work, the acceptability of Materials furnished and Work performed, the acceptable rate of progress of the work, the interpretation of the Contract Documents, the measurement of all quantities, the acceptable fulfillment of the Contract on the part of the Contractor, and payments under the Contract.
  - 2. Work will not be considered completed until it has passed Final Inspection by the Owner's Representative and is accepted by the Owner. The authority of the Owner's Representative is such that the Contractor shall at all times carry out and fulfill the instructions and directions of the Owner's Representative in so far as they concern the work to be done under the Contract.
  - 3. If the Contractor fails to comply with any reasonable order made under the provisions of this Article, the Owner's Representative will have the authority to cause unacceptable Work to be remedied or removed and replaced, and unauthorized Work to be removed, and to deduct the costs thereof from any money due or to become due the Contractor.
  - 4. The Owner's Representative has the authority to suspend work for cause as set forth in Article 1.13L
  - 5. Nothing in this Article or elsewhere in the Contract shall be construed as requiring the Owner's Representative to direct or advise the Contractor on the method or manner of performing any work under

the Contract. No approval or advice as to the method or manner of performing or producing any materials to be furnished shall constitute a representation or warranty by the Owner that the result of such method or manner will conform to the Contract, relieve the Contractor of any of the risks or obligations under the Contract, or create any liability to the Owner because of such approval or advice. The Contractor is solely responsible to ensure the performance of the Work meets the requirements of the Contract Documents.

6. A Licensed Professional or other person hired by Owner under a separate contract is not the Owner's Representative. The Contractor will be notified in writing if the Owner's Representative has been changed.

B. Authority and Duties for Inspectors:

1. In addition to Regulatory Inspectors, the Owner's Representative may assign Inspectors, assistants and other persons to advise the Owner ("Assigned Personnel") whether the work and materials meet Contract requirements.-This includes: (1) inspection of the Work performed and Materials furnished, including without limitation, the preparation, fabrication, or manufacture of Materials to be used, (2) oral rejection of defective Materials and confirmation of such rejection in writing, (3) temporary suspension of the Work for improper prosecution pending the Owner's Representative decision, and (4) exercise of any additional delegated authority. Assigned Personnel are not authorized to: (1) accept Work or Materials, (2) alter or waive provisions of the Contract, or (3) give instructions or advise inconsistent with the Contract Documents.
2. In the event that Regulatory Inspector or Assigned Personnel or the Owner's Representative discover defective Materials or Work not being performed safely or in accordance with Contract requirements, the Owner's Representative will have the authority to reject the Materials or to suspend the Work.
3. Inspection of the Work by Regulatory Inspectors or Assigned Personnel does not relieve the Contractor of responsibility for improper prosecution of the Work. Work done or material furnished that does not meet Contract requirements shall be at the Contractor's risk.
4. In the event that Regulatory Inspectors or Assigned Personnel or the Owner's Representative fail to observe, call out or note faulty work, defective materials, errors, or the Contractor's failure to comply with Contract requirements, that failure does not constitute acceptance or approval of that particular portion of the Work. If this occurs, the Contractor remains obligated to perform the Work in accordance with

the Contract Documents, without additional compensation or Contract Time.

5. If the Owner's Representative notes faulty work, defective materials, errors or the Contractor's failure to comply with Contractor requirements, it will notify the Contractor's Representative.

C. Coordination of Specifications and Plans; As-Built Drawings:

1. Contractor shall bring any real or perceived discrepancy, error between the Plans details or Specifications to the attention of the Owner's Representative before submitting the GMP and before beginning that portion of the Work.
2. If the Contractor fails to bring a conflict to the Owner's attention before it submits the GMP, it has waived its right to additional compensation when the Owner resolves it. In the event the Contractor fails to bring a conflict, of any inconsistency in the Plans and Specifications unless otherwise ordered in writing by the Owner's Representative the Contractor shall provide the better quality of, or the greater quantity of Work or Materials. This provision shall apply only to inconsistencies in express requirements of the Plans and Specifications and not in the interpretations by the Owner's Representative.
3. Anything shown on the Plans and not mentioned in the Specifications, or mentioned in the Specifications and not shown on the Plans, shall be like effect as if shown or mentioned in both. This does not constitute a conflict, discrepancy or error between the two.
4. In cases of apparent discrepancies or conflicts between the Plans and Specifications, the Contractor shall first determine if the matter can be resolved pursuant to the rule stated in Article 1.09C.3 above. If not, the apparent conflict will be resolved by designating the portion of the Contract Documents that take precedence over the others. Therefore, when preparing its Proposal, or when beginning any portion of the Work, the Contractor shall use the following Order of precedence to resolve any apparent conflict: When preparing its Bid or Proposal, or when beginning any portion of the Work, the Contractor shall use the following order of precedence to resolve any apparent conflicts or discrepancies between any of the Contract Documents:
  - a. Permits and Land Use Decision
  - b. Change Orders
  - c. Addenda

- d. Supplementary Conditions (Section 007300) and Insurance (Section 007316)
  - e. General Conditions (Section 007200)
  - f. General Requirements (Division 01)
  - g. Technical Specifications (Division 02 – Division 50)
  - h. Plans.
  - i. Dimensions shown on the Plans, or that can be computed, shall take precedence over scaled dimensions.
  - j. All other Contract Documents not listed above.
- 5. Contractor shall bring any real or perceived discrepancy concerning dimensions, quantities or location between the Drawings, details or Specifications to the attention of the Owner's Representative before beginning that portion of the Work.
  - 6. If the Plans and Specifications each require the same item of work, but different in the quantity of work, the Contractor shall provide the greater quantity of, or better quality of, the work and materials. This difference shall not be considered a conflict in the Plans and Specifications and shall not be subject to the rules for resolving such conflicts as provided above. Moreover, this difference shall not entitle the Contractor to additional compensation.
  - 7. The Contractor shall check and compare all Contract Documents prior to construction and notify the Owner if conflicts, discrepancies, errors or omissions are apparent. In the event of a conflict between Codes, Industry standards, and Reference Specifications, the most stringent requirements apply and the Work shall adhere to the most stringent requirements. A current copy of the Plans and Specifications reflecting all changes that have been made during the Work shall be kept on or near the site of the Work at all times.
  - 8. The Contractor shall provide all work and materials reasonably required or intended to complete the Work, regardless of whether they are expressly mentioned in the Plans and Specifications.
  - 9. The Contractor shall verify measurements provided by the Plans and Specifications at the Project Site to determine if they are still correct since changes to the Plans, Specifications, and Project Site are common and the inherent changing nature of construction work may require adjustments to such measurements. Similarly, the Contractor

is not entitled to rely on measurements deduced or scaled from, but not explicitly provided by, the Plans.

10. The Owner reserves the right to issue additional Drawings or written instructions if that appears helpful or necessary to complete the Work. If so, the Contractor shall perform the Work in accordance with the additional details or instructions.
11. The Contractor shall maintain at the Project Site for the Owner one record copy of the drawings, Plans, Specifications, Addenda, Change Orders and other modifications, in good order and marked currently to record changes and selections made during construction, as well as Working Drawings that have been reviewed and are being used. These shall be available to the Owner's Representative and shall be delivered to the Owner's Representative upon request and upon completion of the Work. The As-Built Drawings shall have recorded upon them all changes and corrections, all actual dimensions, locations and other details of the Work as actually built in progress. As-Built drawings shall be provided for Work performed during the month.
12. Within five (5) Working Days of submitting a notice of Substantial Completion, the Contractor shall submit a complete, signed set of Plans showing all As-Built Drawings conditions on the Project.

D. Construction Stakes, Lines and Grades:

1. Contractor is responsible for all surveying unless specified. The Contractor provided surveying shall be performed by or under the direct supervision of a professional land surveyor licensed in the State of Oregon.
2. The Owner will provide four control points which will have a horizontal value being on the Oregon State Plane (grid) coordinate system (NAD 83/91) and a vertical value being on the City of Portland vertical datum. The Owner will provide staking for the limits of disturbance. The Contractor shall notify the Owner's Representative not less than five (5) Working Days in advance of when Owner's survey services will be required. The Contractor shall be responsible for all other project related construction surveying and staking. This includes, but is not limited to, horizontal and vertical locations of existing (visible or exposed during construction) and new facilities Equipment, pipes; valves; electrical conduits; geotechnical instruments (new and existing); final site topography survey.
3. Contractor shall furnish and set construction stakes establishing lines and grades as required for the work. Contractor shall also survey the Project Site excavation to determine the quantity of excavated, imported and select material and provide data to the Owner with the



good faith estimate and monthly invoice. The Owner reserves the right to confirm quantities by Owner survey methods and Contractor shall accommodate those needs.

4. Work performed by the Contractor without lines and grades having been established and work performed beyond the lines and grades is prohibited. The Contractor shall remove, replace or correct such work at its own expense if directed to do so by the Owner's Representative.
5. All elevations shown on the Plans are City of Portland datum. This datum plane has its zero elevation set equivalent to 1.375 feet below mean sea level as set by the U.S. Coast and Geodetic Survey 1947 adjustment.
6. The Contractor will furnish all staking notes electronically in Adobe PDF format to the Owner for review, including survey notes, with stationing and elevation for all facilities, pipes, structures, appurtenances, etc.
7. The Contractor will be responsible to protect all property corners and monuments of record within the work limits. Any property corners or monuments of record that are moved or destroyed will be replaced in accordance with Oregon law.

E. Inspection:

1. Inspection by the Owner:
  - a. The Owner's Representative may test Materials furnished and inspect Work performed by the Contractor to ensure compliance with the Contract Documents. The Contractor shall not cover any portion of the Work that requires inspection until after the inspection has occurred. Contractor shall provide access to Owner's Representative or Assigned Personnel to all portions of the Work at all times and to plants of manufacture and suppliers. Contractor shall also provide every opportunity to inspect the Work.
  - b. If the Contractor performs Work without the Owner's Representative's inspection or uses Materials that the Owner's Representative has not approved, the Owner's Representative may order affected portions of the Work removed at the Contractor's expense. The foregoing sentence shall not apply if the Owner's Representative fails to inspect the Work within a specific period of time required in the Contract, or in the absence of a specific period of time, within a reasonable period of time after receiving the Contractor's timely written request for inspection or testing.

- c. At the Owner's Representative's direction, any time before the Work is accepted, the Contractor shall uncover portions of the completed Work for inspection. After inspection, the Contractor shall restore these portions of Work to the standard required by the Contract. If the Owner's Representative rejects Work due to Materials or workmanship, or if the Contractor performed such Work without providing sufficient advance request for inspection to the Owner's Representative, the Contractor shall bear all costs of uncovering and restoring the Work and all costs for subsequent inspections by the Owner's Representative. If the Owner's Representative accepts the uncovered Work, and the Contractor performed the Work only after providing the Owner's Representative with sufficient advance notice, the costs of uncovering and restoring the Work will be paid for by the Owner as Extra Work.
2. Inspection Facilities: The Contractor shall furnish walkways, railings, ladders, tunnels, platforms and other facilities necessary to permit the Owner's Representative, Owner's employees, engineer of record and all Inspectors to have safe access to the Work to be inspected. The Contractor shall require producers and fabricators to provide safe inspection access as requested by the Owner's Representative.
3. Sampling: The Contractor shall furnish the Owner's Representative with samples of Materials that the Owner's Representative will test. All of the Contractor's costs related to this required sampling are Incidental.
4. Access by Third Parties -Where third parties have the right to inspect the Work, the Contractor shall coordinate with the Owner's Representative and shall provide safe inspection access. The Contractor shall provide the same opportunity and access to the Work for Regulatory Inspectors and to the State of Oregon, the Federal Government and other entities having jurisdiction in the area or over the Work.

F. Special Inspections and Independent Inspections:

1. Special inspections or independent inspections required as part of the proper performance of the Work shall be coordinated by the Contractor with the Special Inspector and the Owner's Representative. The Contractor shall notify the Owner's Representative at least three (3) Working Days in advance of the need for all independent inspections and testing. The Contractor shall, at the conclusion of these inspections or testing, meet with both the Owner's Representative, and the independent inspector or tester prior to them leaving the site.

G. Delivery of Notices:

1. Whenever written Notices are required or permitted to be given by the Contract Documents, they shall be delivered via first class mail, or a copy attached via email, or in person to the current office address as shown in the records of the Owner. Notices delivered via first class mail shall be deemed delivered five (5) Working Days following the postmarked date.

H. Cooperation and Superintendence by the Contractor:

1. The Contractor shall:
  - a. Keep one complete set of Contract Documents available on the Project Site at all times.
  - b. Cooperate in good faith with the Owner's Representative, Inspectors, the public and other contractors in performance of the Work.
  - c. Designate, from the Contractor's organization, a competent single representative responsible for the Project, experienced in the type of Work being performed, and capable of reading and thoroughly understanding the Contract Documents.
  - d. Provide access, facilities and assistance to the Owner's Representative in establishing such lines, grades and points as the Owner's Representative requires.
  - e. Carefully protect and preserve the Owner's marks and stakes.
  - f. Provide all assistance reasonably required by the Owner's Representative to obtain information regarding the nature, quantity, and quality of any part of the Work.
  - g. Allow the Owner's Representative reasonable access to the Contractor's books and records at all times. To the extent permitted by public records laws, the Owner's Representative will make reasonable efforts to honor the Contractor's request for protection of confidential information.
  - h. Furnish the Owner's Representative all data necessary to determine the actual cost of all, or any part, of the Work.
  - i. Diligently pursue progress of the Work according to the schedule requirements of Article 1.13.
  - j. Direct, coordinate, supervise and control all Work performed under the Contract, including without limitation the Work performed by Subcontractors.

- k. Any substitution of any Contractor key personnel made after proposer selection for Request for Proposals (RFP) for Bull Run Filtration Project Construction Manager/General Contractor Services must be reviewed and approved in writing by the Owner.
- 2. The Contractor shall appoint a single designated representative for the Project in writing. The single designated representative responsible for the Project shall:
  - a. Have full authority and responsibility to promptly execute orders or directions of the Owner's Representative.
  - b. Have full authority and responsibility to promptly supply the Materials, Equipment, labor, and incidental Work required for performance of the Work.
  - c. Be available during the hours of work on the Project Site for communication with the Owner's Representative and
  - d. Be present for all Project Site Work except as provided in the Contract Documents or approved by the City.
- 3. For short periods of time during the performance of minor or Incidental portions of the Work, the Contractor may designate a person to act on behalf of the single designated representative responsible for the Project. The Contractor shall submit the designation in writing to the Owner's Representative. The form of designation shall state the designee's name, duration of appointment, and scope of authority. The single designated representative responsible for the Project shall be available to the Owner's Representative at all times for contact by telephone or radio.
- 4. The workforce shall be trained and experienced for the Work to be performed. The Contractor shall remove from the job and shall not employ again on the Project any laborer, worker, mechanic, foreman, superintendent or any other person who is found to be incompetent or who fails or refuses to perform the Work properly or who conduct interferes with the progress of the Work. In addition, the Contractor shall remove and not employ again on the Project any person who disrupts the Work by being intemperate, troublesome, or disorderly. If the Contractor refuses to take such actions, the Owner's Representative may order the person to be removed by written notice and those instructions shall be followed. Replacement of that person is at the Contractor's cost. To the extent the Contractor fails to remove persons as ordered, the Owner's Representative may suspend the Work by written Notice until such order are complied with or the Owner's Representative may terminate the Contractor under the provisions of Article 1.13M.

5. The Contractor shall provide written proof of its policy to prevent and address sexual harassment, sexual assault, and discrimination against members of protected classes. The Contractor shall implement an Anti-Harassment policy in compliance with the City's Prohibition Against Workplace Harassment, Discrimination, and Retaliation Rule (HR 2.02). Contractor shall ensure that it complies with such policies and that all people employed to work on the Project at the Project Site comply with such policies for the duration of the Project. The Contractor shall have a means for aggrieved workers to report complaints of harassment or other violations of the Anti-Harassment policy and shall take all appropriate actions to address and remedy the complaints.
6. If, for some reason, neither the Contractor nor a fully authorized representative is available, and communication is necessary, the Owner may communicate with, or give directions to, any person working for the Contractor. The Contractor shall follow any direction given by the Owner. Such directions will be confirmed in writing at the Contractor's request.
7. The Contractor's failure to provide the superintendence required by these provisions constitutes a material breach of the Contract, and the Owner's Representative may impose any remedies available under the Contract, including but not limited to Contract termination or suspension of Contract performance.
8. Nothing in this Article changes the Contractor's duties as outlined elsewhere in the Contract Documents. For example, the Licensed Professional's or Owner's Representative's presence does not relieve the Contractor from performing the Work in accordance with the law, statutes, ordinances, or building Codes nor does it relieve the Contractor from obtaining all required Permits.

#### I. Relationship of the Parties

1. The Contractor accepts the relationship of trust and confidence established by this Contract with the Owner. The Contractor further agrees to cooperate with the Designer, Owner, and/or Owner's Representative and utilize the Contractor's best skills, efforts, and judgment in furthering the interest of the Owner; to furnish efficient business administration and supervision; to make best efforts to furnish at all times an adequate supply of workers and materials; and to perform the Work in the best, most expeditious, and economical manner. The Owner agrees to enable the Contractor to perform the Work in the best way and most expeditious manner by furnishing and approving timely information required by the Contractor and making

payments to the Contractor in accordance with the requirements of the Contract Documents.

2. The Owner has separately contracted for Professional, Technical and Expert services with the Designer to provide design for the Work and specification services for the Work, and to provide limited construction support services necessary to ensure that the construction conforms to the Contract Documents.
3. Both the Contractor and the Designer shall be given direction by the Owner or the Owner's Representative. All formal correspondence between the Contractor and Designer must go through the Owner. All changes, directives and contractual obligations must be approved in advance by the Owner.
4. The relationship between the Contractor and the Designer is intended to be cooperative and proactive, both participating on the same team with the Owner. The Contractor shall work diligently with the Designer through the design and documentation process to ensure that the design attains the Owner's goals while staying within the Owner's budget.

#### J. Materials and Equipment

1. The Contractor shall furnish suitable and sufficient Materials and Equipment to properly prosecute and complete the Work. The Contractor shall use on Materials and Equipment of adequate size and condition to meet the requirement of the Work and Contract Documents, and to produce a satisfactory quality of Work. Upon receipt of the Owner's Representative's written order, the Contractor shall immediately remove, and not use again on the Project without the Owner's Representative's prior written approval Materials or Equipment that, in the Owner's Representative's opinion, fails to meet the Contract Documents or product satisfactory product or results.
2. If the Contractor fails to remove Materials or Equipment or fails to furnish suitable and sufficient Materials or Equipment for the proper prosecution of the Work, the Owner's Representative may suspend the Work by written notice until such orders are complied with and such deficiencies are corrected, or the Owner's Representative may terminate the Contract under provisions of Article 1.13M.

#### K. Utilities:

1. General Rules regarding Utilities:
  - a. The parties agree that:

- 1) A normal and usual occurrence in the construction of underground improvements is the discovery of utilities, service laterals, underground pipes, drains and structures that interfere with the Work;
  - 2) A reasonable number of such occurrences are usual and ordinary on Projects that include underground work;
  - 3) Work must sometimes be done in close proximity to these conditions and that such work may be made more difficult than originally thought;
  - 4) Such conditions may require a change in the Contractor's operations, such as changing the amount of traffic control, Pavement and backfill that is required; and
  - 5) The Contractor's GMP to the Owner reflected all costs in dealing with the forgoing.
- b. The Owner will require a reasonable amount of time to perform design changes necessitated by conflicting utilities. In addition, Utility owners will require a reasonable amount of time to make necessary Utility relocations if such relocations are required.
2. Owner Responsibilities: The Owner will provide information it has to Contractor regarding the location of existing watercourses, drains, water lines, sewer lines and Utility lines for purposes of preparing its GMP. Owner does not always have or receive accurate information about the location of utilities. Therefore, such information must be considered to be approximate, and not guaranteed to be accurate. Contractor is responsible for determining the exact location of utilities and existing improvements when performing its Work.
3. Contractor's Responsibilities:
- a. Contractor shall protect the property of Utilities, railways and fire control authorities that may be affected by Contractor's work as well as Utility lines, pipelines, and underground tanks.
  - b. The Contractor shall obtain written permission from the PWB before operating any potable water valve or hydrant. Unauthorized operation is prohibited. Contractor shall pay any fee associated with their operation.
  - c. The Contractor is required to maintain the flow of sewers, drains and water courses that might be interrupted by its Work and restore that flow as directed by Owner.

- d. The Contractor is responsible for any damage caused to any Utility, whether known or unknown, and whether or not that was disclosed by the Contract Documents.
  - e. The Contractor shall maintain in place all Utilities whether or not shown on the Contract Documents. If any Utility needs to be temporarily relocated for the Contractor's convenience or because of the method of construction or as a result of site conditions, Contractor shall bear all costs for that temporary relocation. Contractor shall maintain utilities that are relocated by others in their relocated positions in order to avoid interference with Structures that cross the Project Work.
  - f. The Contractor shall not hinder the work of Owner or the Utility Company in the event that it relocates any Utility. Contractor is responsible for locating all Utilities on the Project Site and any other Utilities which may be impacted by the Work.
  - g. The Contractor shall locate existing Utilities to be crossed or in close proximity thereto by potholing a sufficient distance in advance of the pipe installation in order to facilitate minor changes in grade and resolve conflicts with other Utilities or obstructions. The Owner's Representative may require additional potholing in areas where additional information is needed, potential conflicts are anticipated or hazardous conditions are expected to exist. The cost of required and additional potholing shall be considered to be Incidental Work unless otherwise specified in these Contract Documents.
  - h. If ordered by the Owner's Representative, changes of alignment and grade shall be made during the course of work in order to avoid interference with Utilities and unforeseen obstructions. Minor changes in alignment and grade directed by the Owner's Representative shall be considered to be Field Orders that do not affect the Contract Time or Contract Amount.
  - i. Contractor shall provide the Owner safe unobstructed access to Owner's facilities to operate those facilities, make changes to those facilities, for inspection of the progress of Work, or any other work, the Owner does have facilities in the access roads and the Owner will be using the roads to access Owner facilities.
  - j. Contractor shall confirm the locations of all existing facilities and Utilities in the Work limits including, but not limited to, vaults, structures, pipelines, and appurtenances, CIVs, drainage and utilities, and protect those facilities and Utilities from damage.
4. Notification:



- a. The Contractor shall follow rules adopted by the Oregon Utility Notification Center.
- b. In addition to the notification required by Article 1.09K.4, Contractor shall also give Notice to the Owner of any intended excavation at least two (2) Working Days in advance of the proposed excavation.
- c. The Contractor shall maintain any markings showing the presence of underground facilities. If Contractor does not maintain such markings, and Owner is required to re-establish them, Contractor shall pay Owner any and all costs associated with that activity.

5. Utility Information

- a. Except for Contractor's convenience as described in Article 1.09K.3.e, arranging for a Utility company to remove, relocate, or adjust a facility is the responsibility of the Owner, unless otherwise indicated in the Contract Documents. The Contractor shall schedule work so as to afford the Utility companies sufficient time and space to perform their work. Contact the Owner for information regarding these arrangements.
- b. Any estimates of when adjustment work is to be completed, or provided by organizations, are based upon available Working Days, not Calendar Days, and are not necessarily concurrent or continuous.
- c. The Contractor shall be responsible for all other utility adjustments to finish grade.
- d. A list of the Utilities and their field coordinators may be included in the Contract Documents.
- e. There may be unavoidable delays due to Utility companies or Utility contractors working in the same construction zone. It is imperative for the Contractor to provide accurate work schedules to the Owner's Representative. Notify the Owner's Representative immediately when Utility work causes delays or construction issues.
- f. The Utility companies or Utility contractors may be in the Right-of-Way or on the Project Site working concurrently with this Contract. The Contractor's schedule and the schedules of the Utility companies shall be coordinated and agreed upon prior to beginning construction. The Contractor shall work with the Utility companies or the Utility contractors so that all Work on the Project is completed within the Contract Time.
- g. The Owner does not guarantee the site conditions will remain the same after the Utility companies or the Utility contractors have

performed their work. The Contractor shall perform an assessment of Project Site conditions prior to beginning work and after the Utility companies or utility contractors have completed their work to determine actual conditions.

L. Coordination with Others:

1. Notify Utilities, agencies and organizations located or operated within or adjoining the Project Site. Coordinate any construction activities with other utilities, agencies and organizations including but not limited to schedules, access, and traffic control to minimize disruption to their daily operations.

M. Cooperation with Other Contractors:

1. Owner reserves the right to Award other contracts, including, but not limited to, a pipeline project that may be titled Bull Run Pipeline Project, or issue Permits, for work that may require coordination with the Contractor's operations under this Contract. Both the Bull Run Treatment Project and the Bull Run Pipeline Project may be occurring at the same time.
2. Contractor shall cooperate with the Owner and other contractors and provide all reasonable opportunities to them to allow them to perform their separate work, including, but not limited to, the introduction and storage of materials and equipment.
3. The Contractor shall promptly notify the Owner's Representative if:
  - a. The performance of other contractors hinders, delays, or prevents the Contractor from successfully completing its Work or makes its performance more costly;
  - b. The Contractor's operations are interrelated or dependent upon the work of others and their work has defects that hinders, prevents or otherwise makes unsuitable the successful completion of Contractor's Work.
4. Failure to provide the Notice stated in Article 1.09M.3 constitutes Contractor's acceptance of the other contractor's work and constitutes a conclusive waiver of any later Claim for additional compensation or Contract Time as a result of the other contractors work or activities.
5. Contractor shall defend, hold harmless and indemnify Owner from all Claims and all costs asserted by a separate contractor who asserts that the Contractor damaged its Work or property as provided in Article 1.12H.

6. Contractor is responsible for any cutting, fitting and patching that may be required to complete the Work, except as otherwise specifically provided in the Contract Documents. The Contractor shall not endanger any work of any other contractors by cutting, excavating or otherwise altering any work and shall not cut or alter the work of any other contractor, except as directed by the Owner's Representative.
7. Contractor agrees that if a dispute arises regarding clean-up costs, the Owner's Representative may apportion such costs to Contractor and other contractors as the Owner's Representative determines is fair and equitable.
8. Contractor shall not damage any work that the Owner has performed, either with its own forces or through the forces of another contractor. If the Contractor desires or needs to alter, change, cut or otherwise modify the work of Owner or another contractor in any way it shall seek the Owner's Representative's written approval. If the Owner seeks the Contractor's approval to alter, change, cut or otherwise modify its work, Owner will notify Contractor of that fact.

N. Connections to Public Water System:

1. As a part of the Work, Contractor shall construct all connections, taps, and tie-ins of supply water mains, services and facilities to the public water system whenever those pipes are larger than 12-inches in diameter and disconnect any water mains, services, facilities and appurtenances from those pipes to be abandoned, unless otherwise specified or as directed by the Owner.
2. Use of Facilities before Substantial Completion: In addition to the provisions of Articles 1.09Q and 1.12T, the Owner will require or specify water mains, services or facilities be constructed in segments and connected and used in the public water system during construction, before Substantial Completion.

O. Construction Equipment Restrictions:

1. Load and Speed Restrictions for Construction Vehicles and Equipment: The Contractor shall comply with legal weight and speed restrictions when moving Materials or Equipment. The Contractor shall provide a copy to the Owner's Representative of the jurisdiction permit authorizing the overweight load(s). The Contractor shall control vehicle and Equipment loads and speeds within the Project Site according to the following restrictions, unless otherwise specified:
  - a. The Contractor shall restrict loads and speeds as necessary to avoid displacement or loss of Materials on Subgrades and Aggregate Bases.

- b. Protection of Buried Items: The Contractor shall use temporary fill, steel plates or other methods to avoid overload of pipes, box culverts, and other items that are covered, or to be covered, by fill or backfill.
- c. Responsibility for Damages: The Contractor shall assume responsibility for damages caused by excessive Equipment speed or loads while performing the Work, both inside and outside the Project Site. The jurisdiction's permission to cross Bridges and other Structures according to Article 1.09O will not relieve the Contractor from responsibility for load-caused damages.

P. Removal of Unacceptable and Unauthorized Work:

- 1. Any portion of the Work that does not conform to the requirements of the Contract is unacceptable and defective and shall be removed and corrected by the Contractor, even if it is contended that the Owner's Representative or other assigned personnel knew or should have known of the existence of the unacceptable Work.
- 2. All portions of the Work that do not conform to the requirements of the Contract Documents shall be corrected within a reasonable time at the Contractor's sole expense and without an extension of Contract Time.
- 3. The Owner may replace or correct Work within a reasonable time if the Contractor fails to do so and may charge the Contractor with all reasonable costs incurred with performing that Work and with the costs of storing any salvageable Materials or Equipment. If that occurs, the Owner also is entitled to deduct such costs from any sums otherwise due the Contractor.
  - a. If salvageable Materials, Equipment, or both are stored, the Owner will notify the Contractor of the storage and give the Contractor ten (10) Working Days to remove the Materials and Equipment. If the Contractor fails to remove them by the end of that time, the Owner may sell them in any commercially reasonable manner, whether privately or publicly.
  - b. If sale is made, the Owner will keep all proceeds to the extent that the proceeds do not exceed the costs incurred in correcting and replacing the Work and in storing the Materials and Equipment. Contractor still owes Owner for any difference in costs that may remain after the sale. However, if the proceeds exceed the Owner's cost it will forward those sums to the Contractor.
- 4. The Contract Documents or regulatory agencies may require that portions of the Work be observed, reviewed or inspected before they are obscured or covered. Similarly, the Owner's Representative is

entitled to observe portions of the Work before they are covered or obscured upon request. If the Contractor covers or obscures a portion of the Work that is required or requested to be observed, it shall uncover the Work for observation and bear any cost associated with that activity without a change in Contract Time.

5. The Owner's Representative may request to see a portion of the Work that has been covered regardless of the requirements of the Contract Documents, regulatory agencies or a prior request. Thereafter the Contractor shall comply with the Owner's request. If, upon inspection by the Owner's Representative, the portion of the Work that is uncovered is found to be in accordance with the Contract Documents, the Owner will bear all costs associated with that activity and provide additional Contract Time, if that activity would cause the Contractor to incur liquidated damages. However, if, upon inspection by the Owner's Representative, the portion of the Work that is uncovered is found not to be in accordance with the Contract Documents, the Contractor shall correct the Work and bear any cost associated with that activity without a change in Contract Time, including any cost associated with the Owner's Representative's reinspection.
6. Replacement and correction of Defective Work prior to the time that the Work is completed and accepted is not limited by any warranty period otherwise established by the Contract Documents.
7. Owner retains the right to accept portions of the Work that do not conform to the requirements of the Contract Documents and which were not approved in advance. However, such acceptance will be in writing and given only by the Owner's Representative. Inspectors, employees and other agents of Owner have no authority to bind the Owner to accept nonconforming portions of the Work. If the Owner's Representative chooses to accept nonconforming portions of the Work, and those portions cost less than what the Contractor would have spent to comply with the Contract Documents, Owner is entitled to a credit for the difference in price, which may be deducted from the Guaranteed Maximum Price Contract Amount.

Q. Use of Work During Construction:

1. The Owner may decide to use part of the Work that has been completed before completion of all of the work required by the Contract Documents. If that occurs, the Owner will notify the Contractor in writing of its intention.
2. When use of part of the Work by the Owner begins, the Contractor is

- a. Relieved of the duty of maintaining and protecting that portion of the Work, provided that it has been completed in accordance with the Contract.
  - b. Relieved of responsibility for injury or damage to the portion of Work used by the Owner from use by public traffic or from the action of the elements of nature or from any other cause, except injury or damage resulting from the Contractor's own operations or from Contractor's negligence.
  - c. Relieved of the responsibility of cleaning up that portion of the Work before Acceptance of the Work, unless the Contractor's own operations require such cleanup.
3. Use by the Owner of a part of the Work as described in this Article does not constitute Acceptance of the Work as a whole or any part thereof.

R. Furnishing Temporary Services and Facilities

- 1. Contractor shall provide temporary light, power and other temporary services or facilities complete with connecting piping, wiring, lamps and similar equipment as required during construction of the Work, including testing and startup, and remove temporary facilities upon completion. Obtaining permits and bearing costs of temporary services and facilities is included within the GMP.
- 2. Contractor shall provide and transport water and shall be responsible for the disposal of water. Obtaining permits and bearing the costs is included in the GMP.

S. Final Project Cleanup

- 1. Before final payment is issued, the Contractor shall clean up and neatly trim as applicable the Project and remove all remaining unincorporated Materials and debris. Final trimming and cleanup shall include without limitation the following:
  - a. The Contractor shall retrim and reshape earthwork and shall repair deteriorated portions of the Project Site.
  - b. Where the Work has impacted existing facilities or devices, the Contractor shall restore or replace those facilities to their pre-existing condition.
  - c. The Contractor shall clean all drainage facilities and sanitary sewers of excess Materials or debris resulting from the Work.

- d. The Contractor shall clean up and leave in a neat, orderly condition, Rights-of-Way, Materials sites, and other property occupied in connection with performance of the Work.
- e. The Contractor shall remove temporary buildings, construction plants, forms, falsework and scaffolding, surplus and discarded Materials and rubbish.
- f. The Contractor shall dispose of Materials and debris including without limitation forms, falsework, scaffolding, and rubbish resulting from clearing, grubbing, trimming, clean-up, removal, and other Work. These Materials and debris become the property of the Contractor. The Contractor shall dispose of these Materials and debris immediately.

T. Maintenance Warranties and Guarantees:

- 1. The Contractor expressly warrants its Work shall be performed to the highest standards of good workmanship and shall meet the requirements in the Contract Documents. That warrant shall extend to the fullest extent permitted by Law and shall continue beyond the 2-year correction period discussed below.
- 2. In addition to, and not in lieu of, any other expressed or implied warranties, the Contractor shall make all necessary repairs and replacements to remedy any and all defects, breaks, or failures of the Work occurring within 2 years following the date of issuance of the Certificate of Completion due to faulty or inadequate materials or workmanship. Such repairs and replacements shall conform to the Contract Specifications under which the Contractor originally performed the Work. The Owner shall provide written Notice to the Contractor if such problems occur within the period.
- 3. In the event of a dispute regarding any portion of the Work, the Contractor shall nonetheless provide any warranty service, repairs or replacements as described in Articles 1.09T.1. and 1.09T.2. above, for that portion of the Work that is not in dispute. In the event that a dispute delays Acceptance of the Work, the warranty for portions of the Work not in dispute shall run from the date of Substantial Completion of the remaining portions of the Work.
- 4. The Contractor shall also repair any damage or remedy any disturbance to other property or improvements thereon if caused by the Contractor's Work and if the damage, or disturbances occurs during the warranty period.

5. If the Contractor performs warranty work, the warranty work also shall have a 2-year warranty period from the date of its completion and acceptance by Owner.
6. The Owner will provide the Contractor with written Notice of the need to perform warranty work unless it is determined that an emergency exists, that delay would cause serious additional loss or damage, or if any delay in performing the work might cause injury to any member of the public. If the Contractor, after written Notice, fails within 10 Days to comply with the Owner's request, the Owner has the right to perform the warranty work either by hiring another contractor or by using its own forces. In that event, the Contractor and its Surety shall be liable to the Owner for the cost of the work performed and any additional damage suffered by the Owner.
7. The Contractor shall provide a bond during the 2-year warranty period to guarantee the Contractor's performance of warranty work. The Contractor shall provide to the Owner a bond in the amount of 20 percent of the final Contract Amount in one of the following ways:
  - a. Continuance of the Contract Performance Bond and the Payment Bond.
  - b. Any new Performance Bond and the Payment Bond, acceptable to Owner, which covers the Contractor's warranty obligations imposed by the Contract Documents.
  - c. Cash deposit to the City Treasury. Proof of the deposit shall be a receipt from the Treasurer.
  - d. Other arrangements proposed by the Contractor that the Owner finds acceptable.

U. Responsibility for Materials and Workmanship:

1. The successful performance of this Contract will provide a benefit to the citizens, ratepayers, or taxpayers of the City of Portland. Therefore, satisfactory completion of the Project by the Contractor is of paramount importance. The Contractor agrees that by accepting this Contract it is required to perform the Contract in accordance with the Contract Documents and cannot contend that its performance was excused by any action of the Owner, except to the extent that the Contract terms have been modified by a written Change Order executed by both parties.
2. The Owner is entitled to insist upon completion of the Work in the manner and to the extent required by the Contract Documents. Therefore, any measurement, estimate or certificate made by the



Owner that is incorrect may be corrected by the Owner at any time, regardless of whether that occurs before or after Acceptance of the Work. Similarly, if Work, Equipment, Parts, Products or Materials do not conform to what is required by the Contract Documents, the Owner may require that the Work be redone and that Materials, Parts, Products, and Equipment be replaced, regardless of prior approval by any agent or employee of the Owner.

3. Acceptance of the Work by the Owner will not preclude the Owner from:
  - a. Later insisting that the Work be performed in accordance with the Contract Documents.
  - b. Recovering damages for breach of contract or pursuing any other legal remedies.
  - c. Any other remedy permitted by law.
4. No action whatsoever, nor any verbal or written statement whatsoever, made by any employee or agent of the Owner, will operate as a waiver or as an estoppel, or otherwise preclude the Owner from insisting upon its rights to performance of the Work in accordance with the Contract Documents.

#### 1.10 SOURCE OF MATERIALS

- A. Construction Products List - The CPL is a listing of manufactured products available on the market (shelf items) that have been evaluated and found suitable for specified use in the construction of the Work unless otherwise specified in the Contract Documents. The CPL is published yearly and is available upon request. It may also be viewed on PBOT's web site. The current version in effect at the time of the GMP is the version in effect for the Project. The Owner's Representative may approve for use a conditionally qualified product, or a product qualified for inclusion in a later edition of the CPL, if the Owner's Representative finds the product acceptable for use on the Project. Use of products shall be restricted to the category of use for which they are listed. The Contractor shall install all products as recommended by the manufacturer. The Contractor shall replace qualified productions not conforming to the Contract Documents or not properly handled or installed at no cost to the Owner.
- B. Potable Water System Materials – A Materials List of commercially available products that PWB has evaluated and found suitable for specified use in construction of the Work unless specified otherwise in the Contract documents. This Materials List is located on the PWB website. For additional details concerning the PWB Materials Manual, contact the Owner's Representative. The current version of the Materials Manual in effect at the time of the GMP is the version in effect for the Project. The Owner's Representative may approve for

use a conditionally qualified product. Use of products shall be restricted to the category of use for which they are listed. The Contractor shall install all products as recommended by the manufacturer. The Contractor shall replace qualified productions not conforming to the Contract Documents or not properly handled or installed at no cost to the Owner.

- C. Owner Furnished Materials – Unless otherwise specified in the Contract Documents, Materials listed as Owner-furnished will be available to the Contractor free of charge. The Contractor shall be responsible for all Materials furnished by the Owner and shall pay all delay and storage charges. The Contractor shall replace Owner-furnished Materials that are lost or damaged at no cost to the Owner. Locations at which Owner-furnished Materials are available for pickup by the Contractor will be specified in the Contract Documents. If the locations are not listed in the Contract Documents, the Owner furnished Materials will be furnished to the Contractor at the Project Site. In either case, all costs of handling, hauling, unloading and placing Owner-furnished Materials shall be considered included in the GMP. All Owner-furnished Materials not incorporated into the Work remains the property of the Owner and the Contractor will be responsible for arranging return of the materials to an Owner specified location.
- D. American Iron and Steel- If Water Infrastructure Finance and Innovation Act funding is received the American Iron and Steel Requirements will apply. The Contractor acknowledges to and for the benefit of Portland Water Bureau and the United States Environmental Protection Agency (“EPA”) that it understands the goods and services under this Agreement are being funded with monies made available by the Water Infrastructure Finance and Innovation Act program of the EPA that has statutory requirements commonly known as “American Iron and Steel” that requires all of the iron and steel products used in the project to be produced in the United States (“American Iron and Steel Requirement”) including iron and steel products provided by the Contractor pursuant to this Agreement. The Contractor hereby represents, warrants and covenants to and for the benefit of the Purchaser and the EPA that (a) the Contractor has reviewed and understands the American Iron and Steel Requirement, (b) all of the iron and steel products used in the project will be and/or have been produced in the United States in a manner that complies with the American Iron and Steel Requirement, unless a waiver of the requirement is approved, and (c) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the American Iron and Steel Requirement, as may be requested by the Purchaser or the EPA. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Purchaser or the EPA to recover as damages against the Contractor any loss, expense, or cost (including without limitation attorney’s fees) incurred by the Purchaser or the EPA resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the EPA or any damages owed to the EPA by the Purchaser). While the Contractor has no direct contractual privity with the EPA, as a lender to the Purchaser for the

funding of its project, the Purchaser and the Contractor agree that the EPA is a third-party beneficiary and neither this paragraph (nor any other provision of this Agreement necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of the EPA.

- E. Buy Oregon - According to ORS 279A.120, the Contractor shall give preference to goods or services produced in Oregon if price, fitness, availability, and quality are equal. This provision does not apply to Projects financed wholly or in part by federal funds.

#### 1.11 QUALITY OF MATERIALS

- A. General - The Contractor shall incorporate into the Work only Materials conforming to the Contract Documents and as authorized by the Owner's Representative. The Contractor shall incorporate into the Work only manufactured Products made of new Materials unless otherwise specified. The Owner may require additional testing or retesting to determine whether the Materials or manufactured Products meet the Contract Documents.
- B. Rejected Materials - Materials not meeting the Contract Documents at the time they are to be used are unacceptable and must be removed immediately from the Project Site, unless otherwise directed by the Owner's Representative. In addition, the Owner's Representative may reject any Materials that appear to be defective or that contain asbestos or other Hazardous substances. The Contractor shall not incorporate any rejected Materials into the Work. Rejected Materials whose defects have been corrected may not be incorporated into the Work until the Owner's Representative has approved their use. The Owner's Representative may order the removal and replacement by the Contractor, at Contractor's expense, of any defective Materials.
- C. Certificates and Materials Conformance Documents
  - 1. The Contractor must establish that the Materials, Products, Parts, and Equipment that it proposes to use meet the requirements of the Contract Documents, including the requirements of any Reference Standards or Specifications or industry standards, by submitting the Certifications and Materials Conformance Documents required by the Contract Documents.
  - 2. The Contractor shall bear the cost of providing Certifications and Materials Conformance Documents, including the costs of any sampling and testing that must be performed in order to achieve certification. Materials, Products, Parts and Equipment shall not be incorporated into the Work without acceptable Certifications or Materials Conformance Documents.

3. Certifications shall identify the testing agency, the representative responsible for the test results, and include a copy of the specified test results (for example, AWWA, ASTM, AASHTO, UL, etc.).
  4. Certifications and Materials Conformance Documents shall be clear and understandable to determine whether the Material, Product, Part, or Equipment is the one specified by the Contract Documents. Certifications or Materials Conformance Documents that are unclear or require analysis in order to determine whether the Materials, Parts, Products or Equipment meet the requirements of the Contract Documents are insufficient and will be rejected. The Contractor shall bear all costs of and is responsible for any delay that occurs as a result of unclear Certifications or Materials Conformance Documents.
  5. Certifications and Materials Conformance Documents shall be delivered to the Owner's Representative with the shipment of the Material, Part, Product or Material to which the Certification corresponds, unless other portions of the Contract Documents specify a different procedure.
- D. Testing by Owner: When testing Materials, the Owner will conduct the tests in the field, in the Owner's central laboratory, field laboratories, or other laboratories designated by the Owner's Representative, even though certain AASHTO, ASTM, AWWA, and other Materials specifications may require testing at the place of manufacture. Results of the Owner's tests will be made available to the Contractor.
- E. Costs of Testing: Owner will provide and pay for Quality Control testing of Materials except as follows: The Owner will pay the cost of the first source-review tests on unprocessed aggregates when requested by the Contractor. Thereafter, additional source-review test performed at the Contractor's request shall be paid by the Contractor.
- F. Materials Acceptance Guides: Unless otherwise specified elsewhere in the Contract Documents, Materials will be accepted according to the following guides:
1. The Work shall comply with any Sample provided by the Contractor and approved by the Owner.
  2. The Owner retains the right at any time during construction or at any time during production, fabrication or preparation of the Work, to test Samples to determine whether they meet the requirements of the Contract Documents. The Owner may test any Sample, regardless of prior certification, and regardless whether any prior certification was required. The Owner may either conduct the test with its own forces or hire other persons to perform this work.

3. The Contractor shall cooperate with any sampling and testing that is required or requested. The Contractor shall provide Samples without charge and provide them in time to permit testing before use.
4. If a Sample is to be tested prior to its incorporation into the Work the Contractor shall not incorporate the Material, Product, Part or Equipment into the Work until testing is completed and the Owner's Representative gives permission for its use.
5. The Owner will bear the costs of Quality Assurance testing unless the tests show that the Material, Product, Part or Equipment failed the test and did not conform to the requirements of the Contract Documents, in which case the Contractor shall bear the costs of testing.
6. If the Sample previously was incorporated into the Work and testing shows the sample does not meet the requirements of the Contract Documents, the Contractor shall pay for replacing and repairing any Equipment, Materials, Products or portion of the Work in order to meet the requirements of the Contract Documents.

G. Materials Specifications and Test Method References

1. References to Materials specifications and test methods of AWWA, ODOT, WAQTC, AASHTO, ASTM other governmental agencies, or other recognized organizations mean those officially adopted and in current use by the Owner or organization on the date of GMP.
2. If there are conflicting references in the Contract Documents to required sampling and testing frequencies, the Contractor shall sample and test the Materials according to the first applicable of the following:
  - a. Field-Tested Materials:
    - 1) Supplementary Conditions
    - 2) General Requirements
  - b. Nonfield-Tested Materials:
    - 1) AWWA
    - 2) NSF
    - 3) ASTM
    - 4) AASHTO

- 5) ODOT
  - 6) Other recognized national organizations, such as ANSI, AWWA, IMSA, and UL
  - 7) Industry standards in the location where the Work is being performed.
3. If there are conflicting references in the Contract Documents to required sampling and testing frequencies, the Contractor shall sample and test the Materials according to the first applicable of the following:
    - a. Permits
    - b. Change Orders
    - c. Supplementary Conditions
    - d. General Requirements

#### H. Field-Tested Materials

1. Contractor's Duties: The Contractor shall:
  - a. Furnish Materials of the quality specified in the Contract Documents;
  - b. Provide and administer a Quality Control program as described in the Specifications. Upon request, the Contractor shall provide to the Owner's Representative the names, telephone numbers, and copies of certifications for all personnel performing field testing; and
  - c. Perform other testing as required by the Contract Documents.
2. Types of Tests: The types of tests and testing methods generally required are described in the Specifications or the MFTP, if applicable.
3. Acceptance of Field-Tested Materials:
  - a. The Contractor's test results for field-tested Materials may be verified by the Owner according to the Specifications or the MFTP, if applicable. If the Owner's Quality Assurance test results verify the Contractor's results, the Materials will be analyzed for acceptance according to the methods determined by the Owner's Representative.
  - b. If the Owner's verification testing reveals that the Contractor's data is incorrect, the Owner may require additional testing to determine whether the Materials meet Specifications. The Contractor shall

perform additional Quality Control testing or provide split samples to the Owner for additional testing as directed. If the Materials do not meet Specifications, the Contractor shall reimburse the Owner for the cost of the additional testing, which may be deducted from monies due or to become due the Contractor under the Contract. Incorporated Materials that do not meet Specifications will be evaluated according to Articles 1.13D and 1.09P. If the Materials meet Specifications the Owner will pay the cost for the additional testing.

- I. Nonfield-Tested Materials: The Contractor shall furnish Materials meeting specifications, along with the Materials Conformance and quality Compliance Documents.
  1. Test Results Certificate; The Certificate shall:
    - a. Be from the manufacturer verifying that the Material furnished has been sampled and tested and the test results meet the Specifications.
    - b. Include, or be accompanied by a copy of the specified test results (AWWA, NSF, UL, ODOT, AASHTO, ASTM, ODOT or other)
    - c. Identify the testing agency and the representative to the test results
    - d. Permit positive determination that Material delivered to the Project is the same Material covered by the test results.
    - e. Be delivered to the Owner's Representative with the shipment of the Material.
  2. Quality Compliance Certificate: The Certificate from the manufacturer shall:
    - a. Verify that the Material meet the Specifications, and identify by number the specified test methods used (AWWA, NSF, UL, AASHTO, ASTM, ODOT, or other)
    - b. Permit positive determination that Material delivered to the Project is the same Material covered by the certificate
    - c. Be delivered to the Owner's Representative with the shipment of the Material, or be an identification plate or mark, decal, sticker, label, or tag attached to the container or Material.
  3. Equipment List and Drawings: Submit these lists to the Owner's Representative for review of conformance with the Contract Documents. These consist of lists of proposed Equipment and Materials, such as:
    - a. Shop Drawings

- b. Material lists
  - c. Catalog description sheets
  - d. Manufacturer's brochures.
4. Certificates of Steel Materials: Materials will be subject to acceptance testing if the Owner's Representative so elects. The Owner's Representative may reject damaged or non-Specification Materials regardless of the Materials Conformance Documents furnished.

J. Use of Materials Without Acceptable Materials Conformance Documents

- 1. General: The Contractor shall not incorporate Materials into the Project prior to submittal of Materials Conformance Documents acceptable to the Owner's Representative. The Owner's Representative may waive this requirement temporarily in writing if Materials are necessary for immediate safety.
- 2. Materials Incorporated for Immediate Safety: If Materials are incorporated into the Project for immediate safety before acceptable Materials Conformance Documents are available, no payment will be made for the value of the Materials, or the costs of incorporating them, until Materials Conformance Documents have been submitted to and approved by the Owner's Representative, or the Materials are otherwise found through testing to comply with the Contract Documents.
- 3. Contractor's Request for Testing Assistance: If acceptable Materials Conformance Documents are not available, the Contractor may either have the necessary tests performed at a private laboratory or request in writing that the Owner's Representative:
  - a. Determine if the Owner or its agents can sample or test;
  - b. Estimate the cost to the Contractor for the testing service; and
  - c. Estimate the time to obtain the test results.
- 4. The Owner's Representative will provide this information to the Contractor in writing. If the Contractor requests the Owner's Representative, in writing, to proceed, the Owner's Representative may arrange for the sampling and testing, at the Contractor's expense. If these tests determine the Material complies with the Specifications, the Materials may be incorporated into the Project, or for Materials previously incorporated pursuant to (b) above, payment will be authorized.



K. Storage and Handling of Materials

1. The Contractor shall store and handle Materials so as to preserve their quality and fitness for incorporation into the Work. The Contractor shall restore all storage sites to their original conditions according to Article 1.09S, or to comply with any applicable Permits, orders, or agreements, at the Contractor's expense.
2. Stored Materials
  - a. Shall be readily accessible for inspection;
  - b. May be stored on approved parts of the Project Site; and
  - c. May be stored on private property if written permission of the owner or lessor is obtained and provided to the Owner's Representative.

L. Relationship to Submittals; If the Contract Documents require that a Product, Material, Part or Equipment must be submitted to the Owner's Representative for review before use in the Work, the Contractor shall follow the requirements of the Contract Documents including, but not limited to, Specification Section 013300 regarding the submittal process.

M. Fabrication Inspection Expense:

1. Fabrication of certain items outside of the State of Oregon creates additional shop and plant inspection expense to the Owner. It is impractical, and extremely difficult, to determine the actual additional expenses incurred. Therefore, each time that inspection by Owner personnel is necessary, payment to the Contractor will be reduced by an amount computed at the following rates:

ZONE	Place of Fabrication	Reduction in Payment
------	----------------------	----------------------

1	All of State of Oregon, and those portions of adjacent states within 50 airline miles of the Oregon border	\$0
2	Outside of Zone 1, and up to 300 airline miles from the Oregon border	\$100 per calendar day
3	Outside of Zone 2, up to 3,000 airline miles from the Oregon border, and within the continental United States.	Round trip coach airfare from Portland, Oregon plus \$100 per calendar day
4	Outside of Zone 3, or outside of the continental United States.	Round trip coach airfare from Portland, Oregon plus \$150 per calendar day

2. Calendar Day charges begin on the first Day the Owner's inspector begins travel to begin work at the fabrication site, and continue without interruption through the final day of travel back to Oregon. The Contractor will be notified in writing of the dates of beginning and ending of Calendar Days used in computing payment reduction.
3. This section applies to all fabricated items or manufactured Materials that are inspected by Owner personnel when fabricated or manufactured in Oregon. They include, but are not limited to:
  - a. Structural steel fabrication
  - b. Prestressed concrete members
  - c. Precast concrete
  - d. Epoxy coating of reinforcing steel, and
  - e. Other items specifically identified in the Specifications requiring fabrication site or in-plant inspection by the Owner.

## 1.12 LEGAL RELATIONS AND RESPONSIBILITIES

### A. General:

1. The Contractor shall comply with all applicable Laws and regulations in regard to all matters concerning this Contract Documents. This includes, but is not limited to, compliance with the ADA (Americans with Disabilities Act), Title 10 of the City Code regarding Erosion Control, City business license requirements, EEO certification

requirements, Equal Benefits compliance, building code requirements, and CCB licensing and bonding requirements. The Contractor also shall comply with the orders, rulings, decrees and decisions of any administrative or judicial officials that in any manner whatsoever affects the Project, the Work, the safety of persons around the Project Site, or the manner in which the Work is performed. If the Contractor observes that any portion of the Work is to be performed in a way that violates the foregoing, it shall notify the Owner in writing immediately and shall pay all fees in connection with any violation thereof at no cost to the Owner.

B. Other Agencies Affecting Owner Contracts:

1. Representative of regulatory bodies or units whose Laws may apply to the Work shall have access to the work according to Article 1.09E.4. The agencies include, but may not be limited to the following:
2. Federal Agencies:
  - a. Agriculture, Department of:
    - 1) Forest Service.
    - 2) Natural Resources Conservation Service.
  - b. Army, Department of the:
    - 1) Engineers, Corps of.
  - c. Commerce, Department of:
    - 1) National Marine Fisheries Service.
  - d. Defense, Department of
  - e. Energy, Department of
  - f. Environmental Protection Agency
  - g. Federal Energy Regulatory Commission
  - h. Geological Survey
  - i. Health and Human Services, Department of
  - j. Homeland Security, Department of:
    - 1) US Coast Guard.

- k. Interior, Department of:
  - 1) Heritage, Conservation and Recreation Service.
  - 2) Indian Affairs, Bureau of.
  - 3) Land Management, Bureau of.
  - 4) Mines, Bureau of
  - 5) Reclamation, Bureau of
  - 6) Geological Survey
  - 7) Minerals Management Service
  - 8) Surface Mining, Reclamation and Enforcement, Office of.
- l. Minerals Management Services
- m. National Oceanic and Atmospheric Administration
- n. Solar Energy and Energy Conservation Bank
- o. US Fish and Wildlife Service.
- p. Labor, Department of:
  - 1) Occupational Safety and Health Administration.
  - 2) Mine Safety and Health Administration.
- q. Transportation, Department of:
  - 1) Federal Highway Administration
- r. Water Resources Council
- 3. State of Oregon Agencies:
  - a. Administrative Services, Department of
  - b. Agriculture, Department of.
    - 1) Natural Resources Division.
    - 2) Soil and Water Conservation Division.
  - c. Columbia River Gorge Commission.

- d. Consumer and Business Services, Department of:
  - 1) Insurance Division.
  - 2) Oregon Occupational Safety and Health Division.
- e. Energy, Department of.
- f. Environmental Quality, Department of.
- g. Fish and Wildlife, Department of.
- h. Forestry, Department of.
- i. Geology and Mineral Industries, Department of.
- j. Human Services, Department of (DHS)
- k. Insurance and Finance, Department of.
- l. Oregon Occupational Safety and Health Division.
- m. Labor and Industries, Bureau of.
- n. Land Conservation and Development Department.
- o. State Lands, Division of.
- p. Transportation, Department of.
- q. Water Resources Department.
- 4. Local Agencies:
  - a. City Council.
  - b. County Courts.
  - c. County Commissioners, Board of
  - d. Design Commissions
  - e. Historical Preservation Commissions
  - f. Metro.
  - g. Planning Commissions.
  - h. Port of Portland

- i. Public and Private Utilities:
  - 1) County Service Districts.
  - 2) Fire Protection Districts.
  - 3) Irrigation Districts.
  - 4) Lighting Districts.
  - 5) Metropolitan Service Districts.
  - 6) Sanitary Districts.
  - 7) Water Districts.
- 5. Oregon Federally Recognized Tribal Governments:
  - a. Confederated Tribes of Grand Ronde
  - b. Confederated Tribes of Siletz
  - c. Confederated Tribes of Warm Springs

C. Permits, Reviews Licenses, and Taxes:

- 1. The Contractor shall comply with the terms of all permits.
- 2. The Contractor shall, without additional expense to the Owner, be responsible for paying for any necessary fees, obtaining any necessary licenses and Permits, and for complying with any Laws, applicable to the performance of the Work, unless expressly provided otherwise in the Contract Documents. Contractor shall, without additional expense to the Owner, provide assistance to Owner on Contractor means and methods, identify staging areas, and other information pertinent to obtaining permits, regardless of who obtains the permits.
- 3. The Owner will obtain the following Project Site permits: Building Permit, Grading Permit, Demolition Permit, 1200-C General Construction Permit (with Traffic Control Plans and Erosion and Sediment Control Plans prepared by the Contractor), and Multnomah County Utility Placement Permit.
- 4. The Owner will provide copies of the following regulatory reviews; Land Use Reviews and Final Decisions (Land Use Review Type III and Oregon Health Authority Review Program Plan).

5. The Contractor acknowledges and agrees that the preliminary approval of the Owner's Plans and Specifications by regulatory agencies does not prohibit such agencies from requesting changes in order that the Work complies with the provisions of applicable Laws. Contractor acknowledges and agrees that a reasonable number of changes directed by Regulatory Inspectors are inherent in the nature of construction Work.
6. Contractor shall defend, hold harmless and indemnify Owner for all claims brought in connection with the Contractor's failure to, in whole or in part, to obtain the necessary Permits.

D. Rights-of-Way, Easements, and Premises:

1. The Contractor shall comply with the terms of the easements. The Contractor shall confine its construction activities within property lines, rights-of-way, limits of Easements and limits of construction Permits as shown or specified in the Contract Documents unless the Contractor has obtained permission to use other land from the owner(s) of private property. The Contractor's GMP shall include all costs related to its needs for additional space and property if such is needed by the Contractor's method of operation to perform the Work. In order to protect the City from any claim by an owner of private property, the Contractor shall provide the Owner's Representative with written permission from the property owner prior to the use of the property.

E. Patents, Copyrights, and Trademarks:

1. Prior to use of designs, devices, Materials, or processes protected by patent, copyright, or trademark, the Contractor shall obtain from the Entity entitled to enforce the patent, copyright, or trademark all necessary evidence of legal right to use such design, devise, Materials or process.
2. The Contractor shall indemnify, defend and hold harmless the Owner and all third parties and political subdivisions having a possessory or ownership interest or regulatory authority over the Project or Project Site from claims of patent, copyright or trademark infringement, and from costs, expenses and damages the Contractor or Owner may be obligated to pay as a result of such infringement during or after completing the Work.

F. Safety, Health, and Sanitation Provisions

1. General:

- a. The Contractor shall comply with all Laws concerning safety, health, and sanitation standards. The Contractor has complete responsibility for the safety and health of its employees and the employees of its Subcontractors at any tier. The Contractor shall not delegate this responsibility to its Subcontractors, other persons or agencies. The Contractor is responsible for ensuring that employees and Subcontractor tiers follow the following safety and health requirements, receive training, and understand the Owner's applicable policies and procedures that affect the Work. The Contractor shall require additional safety measures as may be necessary for a particular project.
- b. Contractor Compliance: The Contractor shall comply with all safety and health Laws including, but not limited to, the following:
  - 1) General Construction Safety Provisions- TBP
  - 2) Oregon Revised Statutes - ORS 654 - The Oregon Safe Employment Act
  - 3) Oregon Administrative Rules - OAR 437 - The Oregon Occupational Safety and Health Code
  - 4) Oregon Occupational Safety & Health Administration (OR-OSHA)
    - a) Division 1 - General Administrative Rules
    - b) Division 2 - General Occupational Safety & Health Rules
    - c) Division 3 - Construction
  - 5) Bureau of Labor and Industries
  - 6) Oregon Department of Transportation
- c. Statute Versus Contract Documents: In the event that the law requires greater safety obligations than those imposed by the Contract Documents, the Contractor shall perform the obligations required by law without additional cost to the Owner.
- d. Coordination: The Contractor shall coordinate the Work with police, fire, emergency service providers, and other agencies, school districts and individuals as may be required. Refer to Names, Address, and Phone Numbers that may be found in the Contract Documents for specific contact information.
- e. Site Specific Safety and Health Plan (SSSHP): The Contractor shall develop and submit an SSSHP addressing safety issues for all



persons working on the Project, regardless of their employer. The SSSHP shall be prepared by a Competent Person and consist of a narrative and supporting plans detailing the methods for dealing with all the known exposures and risks. The SSSHP shall detail the methods for addressing Work hazards identified by the Job Safety Analysis.

- f. Document Control: The Contractor shall maintain at least one current copy of the SSSHP at the Project Site for the duration of the Project, instruct all employees where this document is available for reference, and inform the Owner's Representative where to find a copy on the Project site.
- g. Subcontractors: The Contractor shall develop a plan for distributing information in the SSSHP to all persons working on the Project, regardless of their employer, establish a method for documenting all safety training, and maintain an inventory of personal protective equipment provided to all works.
- h. Other Specifications: SSSHP shall also comply with the requirements of the Contract Documents.
- i. Public Safety: The Contractor shall ensure the public safety during its performance of the Work and minimize public inconvenience. Prepare a description of the methods for securing the Work area from public access.
- j. Competent Persons: The Contractor shall supply a list of competent persons, together with 24-hour contact numbers and areas of expertise for each of the applicable following specialties:
  - 1) Confined Space
  - 2) Excavation and Shoring
  - 3) Cranes and Rigging
  - 4) Electrical and Hot Work
  - 5) Chemicals and Biohazards
- k. Working Procedures: The SSSHP shall contain detailed information outlining safe working procedures to address any identified hazards and risks when completing the Work, including the following:
  - 1) Confined Space: Describe entrance and exit procedures from confined spaces. Outline procedures and Equipment requirements when working in a confined space. Define the

rescue procedure to extract an employee during an emergency. Describe all personal protective equipment provided to employees working in a confined space including gas monitoring Equipment use, maintenance, and storage.

- 2) Excavation and Shoring: Define the procedures when excavating undisturbed and previously disturbed soils. Describe the requirements when working around existing Utilities, manholes, and connections, lateral connections, work within historic trench limits, and entering and exiting from trenches.
  - 3) Cranes and Rigging: Provide requirements for operators and equipment certifications including lift capacity. Identify all lift equipment to be used on the Project, describe the plan(s) for moving, and lifting materials, and define equipment location(s) and position(s) to perform safe lifts.
  - 4) Electrical and Hot Work: Describe lockout/ tagout procedures for electrical Equipment, define the procedures for requesting that existing systems be taken out of service, for testing and troubleshooting new Equipment and coordinating with any outside Utility or agency.
  - 5) Chemical and Biohazards: Identify all substances, agents and site conditions that present a hazard and recommend actions for their control. Provide and maintain Equipment in good working order to test and monitor for hazardous substances.
  - 6) Other Issues: Describe procedures for addressing any other safety issues other than what has been described above.
- I. Project Emergency Procedures: The Contractor shall develop and implement a project emergency procedures plan to handle any catastrophic event that could occur on the Project, such as flood, fire, cave-in, slide, power outage, sewer gas, chemical spill, or similar emergencies. Some examples of topics the plan could address include safe distance and staging area (safety zones), evacuation routes, emergency medical treatment and first aid, emergency alerting and response procedures, personal protective and emergency equipment.
- m. Submittal Requirements: The Contract shall submit copies of the Project SSSHP, including the JSA, for review to the Owner's Representative. The Owner's Representative will review the plan to determine if it addresses known exposures and risks in a reasonable manner and reject the submittal if it fails to do so. Nevertheless, the Owner's review is not intended to, nor does it, relieve the Contractor of its obligation to be completely responsible for the safety and health of

all persons working on the Project nor does it diminish any other contractual or legal obligation of the Contractor.

- n. Review and Acceptance: Construction activity shall not begin until the Owner's Representative has reviewed and accepted the SSSHP. Continued acceptance of the SSSHP will be predicated on demonstrated performance to comply with the plan's requirements. If a work situation poses a safety hazard not covered by the Plan, the Contractor shall take immediate action to correct the safety hazard and modify the SSSHP accordingly.
- o. Secure Project Site: The Contractor shall provide and maintain all labor, material, and equipment needed to protect the public, employees, staff and visitors, and to secure the Project Site from damage until the Work is complete and accepted by the Owner. This may include labor, lighting, fencing, alarm systems and other miscellaneous materials to maintain security at all sites where the Contractor may be working, staging work and storing materials or equipment. The Contractor also shall assure that only authorized personnel are at the Project Site.
- p. Safety Equipment: The Contractor shall furnish all safety equipment required by the SSSHP.
- q. Cost: The cost of development and initial implementation of the SSSHP is included in the Phase 1 PTE fee. The Contractor shall include further implementation and maintenance of the SSSHP in the GMP.
- r. Contractor shall notify the Owner's Representative of scheduled safety meetings so Owner personnel may attend.
- s. Subcontractor Health and Safety Record: Subcontractor shall include with the bid the following information:
  - 1) Subcontractor's current Worker's Compensation Experience Modification Rate (EMR) and the Subcontractor's EMR for years 2015, 2016, 2017 and 2018 and most current EMR available. If the Subcontractor's EMR is currently 1.00 or greater, attach a letter of explanation.
  - 2) Indicate whether or not the Subcontractor has been cited for any OSHA violations within the past 24 months. If yes, provide details including specific violation(s) and date(s).
  - 3) List the Subcontractor's 3-digit Standard Industry Classification (SIC) code and all entities of the Subcontractor's OSHA Recordable Lost Time Incident Rate.

G. Independent Contractor Status:

1. The Work performed under the Contract Documents are those of an independent contractor. The Contractor is not an officer, employee, or agent of the City as those terms are used in ORS 30.265.
2. Nothing in this Section requires the Contractor or its insurer, to indemnify the Owner, Owner's Representative, or agents for any claims or losses arising out of death, or bodily injury to persons or property damage caused, in whole or in part, by the negligence of the Owner, Owner's Representative, or agents.

H. Indemnity/Hold Harmless:

1. To the fullest extent permitted by Law, and except to the extent otherwise void under ORS 30.140, the Contractor shall indemnify, hold harmless, and defend Owner, its officers, directors, employees and agents from any and all claims, losses, fines or other fees, damages, attorney fees, costs and liabilities arising out of, resulting from, or any way related to the following: any damage, injury, loss expense, inconvenience or delay described in this Article; any accident or occurrence that happens or is alleged to have happened in or about the Project Site or any place where the Work is being performed, or in the vicinity of either, at any time prior to the time the Work is completed in all respects; any failure of the CM/GC to observe or perform any duty or obligation under the Contract documents that is to be observed or performed by the CM/GC, or any breach of any agreement, duty, obligations, responsibility, covenant, provision, requirement, representation or warranty of the CM/GC contained in the Contract documents or in any subcontract; the negligent acts or omissions of the CM/GC, a Subcontractor or anyone directly or indirectly employed by them or any one of them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder; any failure to comply with all applicable Laws and regulations by the CM/GC or any Subcontractor, or anyone employed by any one of them, or anyone for whose acts they may be liable; and any lien filed upon the Project or bond claim in connection with the Work.
  - a. For purposes of this Article, "claims" includes, but is not limited to, any assertion of a right to money damages or equitable relief or any combination thereof.
  - b. For purposes of this Article, the term "fines or other fees" includes, but is not limited to, all fees and fines imposed on Owner by any Federal or State entity for failure to complete the Bull Run Filtration Project Milestone as required for the City to maintain the schedule for

compliance with EPA rules. Provided however, Contractor's obligations under this Article will apply only to the extent such fees and fines are caused by the breach of contract, negligence, or willful misconduct of the Contractor or those for whom the Contractor is responsible.

- 1) The Contractor shall consider the Oregon Administrative Rules (OAR), and EPA administrative rules in considering the potential fines and penalties that can be assessed to the Contractor for failure to meet the Bull Run Filtration Project Milestone.
- 2) Representative example of how the fines may be calculated and assessed are:
  - a) EPA's National Drinking Water regulations are legally enforceable, meaning that both EPA and the states can take enforcement actions.
  - b) EPA may issue administrative orders, take legal actions, or fines for violations. Under Section 1414(b) of the SDWA, an imposed penalty not to exceed \$25,000 per Day per violation: under Section 1414(g)(3) of the SDWA, an administrative order can result in a \$5,000 maximum penalty assessed: up to \$25,000 per violation per Day.
  - c) The Oregon Health Authority, Public Health Division (OHA) per OAR 333-061-0090 Penalties, may assess \$1000 per Day per violation.
2. Owner will notify Contractor of any claim of which it is aware that requires Contractor to defend, indemnify and hold Owner harmless. Thereafter, Contractor shall send written Notice to Owner within 30 Days that it will defend, indemnify and hold Owner harmless. Contractor's failure to provide such notification is a breach of contract. In the event that Contractor fails to give Notice within 30 Days, Owner may defend the claim and charge Contractor with any costs associated with that effort.
3. Owner reserves the right to participate in any claim irrespective of Contractor's obligations to indemnify, hold harmless, defend or notify. However, if Owner elects to participate in any claim after receiving notification from Contractor, Contractor is not obligated to indemnify Owner for the costs associated with that participation, although its other obligations to indemnify, hold harmless and defend remain intact.
4. Nothing in this section requires the Contractor or its insurer, to indemnify the Owner for any claims or losses arising out of death, or

bodily injury to persons or property damage cause, in whole or in part, by the negligence of the Owner.

I. Employee Drug Testing Program

As required by ORS 279C.505(2), the Contractor shall have in place, and maintain during the period of the Contract, an employee drug-testing program. The Owner retains the right to audit or monitor the program. On request by the Owner's Representative, the Contractor shall furnish a copy of the employee drug-testing program.

J. Assignment of Claim Relief – The Contractor hereby assigns to the Owner any Claim for relief that the Contractor has or may have in the future by reason of violation of 15 USC §§ 1-15 or ORC 646.725 or ORS 646.730.

K. Conflict of Interest – The Contractor shall not give or offer any gift, loan or other things of value to any employee of the Owner or the Design Consultant in connection with the award or performance of the Contract. The Contractor shall not rent, lease, or purchase Materials, supplies or Equipment, with or through any Owner employees.

L. Third Party Beneficiary:

The parties agree that the execution of this Contract is not intended to, nor does it create, any third-party beneficiary rights in any person.

M. Responsibility for Damage to Work:

1. The Contractor shall perform the Work as required by the Contract Documents, including, but not limited to, providing all labor, Materials, Equipment, tools, machines and Incidental Work necessary for its performance. In addition, the Contractor is responsible for the means and methods of construction and to ensure the Work meets the requirements in the Contract Documents.
2. Until Acceptance of Work is completed, the Contractor is responsible for any damage caused to either permanent or temporary work, Utilities, Materials, plants and Equipment, all of which shall be repaired to the satisfaction of the Owner's Representative at the Contractor's expense. Damage to any portion of the Work that has been completed and accepted by the Owner and which is open for public use is not the responsibility of the Contractor unless caused by the Contractor or its Subcontractors.
3. The Contractor shall repair any damage for which it is financially responsible promptly. If the damage is something for which the Contractor is not financially responsible, the Owner's Representative

may direct the Contractor to repair the damage with compensation established as follows:

- a. If the Contract was one that had Unit Prices established for performing the work, the Contractor will be compensated at those Unit Prices;
  - b. If the Contract, or a portion of the Contract, was one that used Lump Sum pricing, then the Owner and Contractor shall use the Schedule of Values;
  - c. If neither Unit Prices nor the Schedule of Values from Lump Sum pricing is applicable, compensation will be paid as Force Account Work.
4. The Owner reserves the right to have any work performed for which the Contractor is not financially responsible by its own forces or by hiring another contractor to perform the work.
  5. Partial Relief of Responsibility for Damage to Work Caused by Public Traffic:
    - a. Interim Acceptance:
      - 1) The Contractor may request in writing interim acceptance of certain completed portions of the Work. If approved, the Owner's Representative will issue written interim acceptance stipulating the scope and duration of the Contractor's relief from responsibility for damage to the Work caused by the public. The Owner's Representative will also include in the interim acceptance the scope and duration of Contractor's relief, if any, from responsibility for protection and maintenance.
      - 2) Scope of Relief: For the duration of interim acceptance issued by the Owner's Representative, the Contractor will be relieved of responsibility to repair those portions of the Work upon which relief was granted under this Article. The scope of potential relief applies only to damages caused by the public, and is limited to the following:
        - a) A segment of Roadway, drainage facilities, slopes, lighting, traffic control devices and access facilities; and
        - b) Traffic signals and appurtenances at an intersection;
  6. Vandalism and Theft:
    - a. The Contractor shall provide reasonable protection of the Work from Vandalism and Theft until Acceptance of the Work. The

Contractor shall be responsible for all losses caused by any Vandalism or Theft that occurs prior to Acceptance of the Work.

b With respect to Vandalism only, the Contractor is responsible to perform repairs necessary to address any Vandalism.

7. Reused, Reinstalled, and Salvaged Materials – Contractor has sole responsibility to ensure that all items required to be reused, relocated, reinstalled, salvaged, or to remain in the work are removed, stored, protected, reinstalled, or delivered to the Owner in the same condition as they were before the Contractor initiated the Work.

N. Responsibility for Damage to Property and Facilities:

1. General – As used in this Subsection, the term “Damage” is any alteration in such a way as to impair value, usefulness or normal function caused by the Contractor’s operations.
2. The Contractor shall be solely responsible for Damage arising from:(a) The Contractor’s operations; (2) The Contractor’s negligence, gross negligence, or intentional wrongful acts; or (3) The Contractor’s failure to comply with any provision of the Contract Documents. The Owner may withhold funds due to the Contractor or it’s Surety until all lawsuits, actions, and claims for injuries or damages are resolved, and satisfactory evidence of resolution is furnished to the Owner.
3. Property Protection: Contractor shall protect, and take every reasonable precaution to avoid damage to, all public and private property that might be damaged by the Contractor’s operations. To the end, the Contractor shall determine the location of properties and facilities that could be damaged by the Contractor’s operations, and shall protect them from damage. The Contractor shall also protect monuments and property marks.
4. Property Repair: If public or private property, or both, is damaged by the Contractor’s operations, the Contractor shall either repair the damage, or have the damaged repaired by others at its own expense, without additional compensation from Owner. The repair shall bring the property damaged back to the same condition as it was before the damage occurred. If repair and restoration is not feasible, the Contractor shall pay the Owner of the damaged property for the damage. If the damage has been caused to property of the Owner, the Owner has the right to determine whether the property shall be repaired and restored by the Contractor or not. If Owner elects to have the property repaired or restored with its own forces or by another entity, the Contractor shall pay the Owner all costs



associated with that repair and restoration. If Owner elects not to repair the damage or restore the property, Contractor shall pay Owner the fair market value of the property in an undamaged condition.

5. Vehicle and Other Removal Notice: Contractor shall give reasonable Notice to owners and occupants of property adjacent to the Work to permit them to remove vehicles, trailers and other possessions as well as salvage or relocate plants, trees, fences sprinkler systems or other improvements in the Easement or Right-of-Way that are designated for removal or which might be destroyed or damaged by the Contractor's operations.
6. Landscape Protection/Restoration: Contractor shall protect all trees and vegetated areas not designated for removal or not part of the Work. The Contractor shall restore all disturbed areas, by planting, seeding, mulching, and providing erosion control as set forth in the Contract Documents or as directed by the Owner's Representative. If conditions are such that seeding cannot be done, the Contractor shall provide temporary erosion control measures as set forth in the Contract Documents or as directed by the Owner's Representative.
7. Clearing Work Review: Contractor shall review the location, limits and methods to be used with the Owner's Representative prior to performing any clearing Work.
8. Sign Protection: Contractor shall protect all signs, including business signs and tourist-oriented direction signs, from damage whether the signs are to remain in place or are placed on temporary supports until they are reinstalled on permanent supports in the same or similar location. Signs that are damaged shall be repaired at Contractor's expense. Contractor is responsible for any and all damages that result from the displacement of such signs.
9. Permanent Survey Markers:
  - a. Contractor shall notify the Owner's Representative not less than ten (10) Working Days prior to starting work in order that the Owner's Representative may take necessary measures to ensure the preservation of survey monuments, stakes, lot stakes and bench marks. Contractor shall not disturb permanent survey monuments, stakes, lot stakes or bench marks without the consent of the Owner's Representative, and shall bear the expense of replacing any that are disturbed.
  - b. When a change is made in the finished elevation of the pavement of any roadway in which a permanent survey monument is located, Contractor shall adjust the monument cover to the new grade at no additional expense to Owner.

10. Construction and Survey Markers - Contractor shall preserve construction survey stakes and markers for the duration of their usefulness during construction. If survey stakes are lost or disturbed through the Contractor's negligence and therefore need to be replaced, the Contractor shall pay for the cost of the replacement. The amount of that cost may be deducted from any payment due to Contractor.
11. Protection and Restoration of Non-City Property and Facilities
  - a. The Contractor shall determine the location of properties and facilities that could be damaged by the Contractor's operations, and shall protect them from damage. The Contractor shall protect monuments and property marks until the Owner's Representative has referenced their location and authorized their removal. The Contractor shall restore property or facilities damaged by its operations to the condition that existed before the damage, at no additional compensation.
  - b. The Contractor shall provide temporary facilities when needed, e.g., to maintain normal service or as directed by the Owner's Representative, until the required repair, rebuilding, or replacement is accomplished.
  - c. Protection of Existing Signs: The Contractor shall protect specific service signs, e.g., business logos, and tourist-oriented directional signs (TODS) from damage, whether the signs are to remain in place or be placed on temporary supports. The Contractor shall repair or replace damaged signs at no cost to the Owner.

O. Responsibility for Defective Work:

1. The Contractor shall make good any Defective Work, Materials or Equipment incorporated into the Work, in addition to any correction required under the 2-year warranty set forth in Article 1.09T. This includes but is not limited to:
  - a. Correcting or repairing any defects, in or damage to, the Work that results from the use of improper or defective materials or workmanship.
  - b. Replacing, in its entirety, the Work affected by the use of improper or defective Materials or workmanship to the extent provided by Law and
  - c. Correcting or repairing any Work, Materials, Structures, existing surfacing, pavement, Utilities, or sites, including, without limitations, wetlands, damaged or disturbed in that correction, repair or replacement.
2. Manufacturer Warranties and Guarantees:

- a. Latent Defects – The Contractor shall remain liable for all latent defects resulting from causes other than fraud or gross mistakes that amount to fraud until the expirations of all statutes of limitations and ultimate repose, the Performance Bond, Warranty Bond, or warranty period, whichever expires last. The Contractor shall remain liable for all latent defects resulting from fraud or gross mistakes that amount to fraud regardless of when those latent defects may be discovered, and regardless of whether such discovery occurs outside any applicable statutes of limitations or ultimate repose or any Performance Bond, Warranty Bond, or warranty period.
- b. Manufacturer Warranties
  - 1) The Contractor shall furnish Warranties from the Manufacturer and signed by a Manufacturer's Representative. In the event that the Manufacturer's Warranty fails to meet the requirements set forth in the Contract documents, the Contractor shall be responsible for any uncovered time or shortfall.
  - 2) The Warranty period in excess of those specified in the General Conditions, will be specified in the applicable Specification Section for which it applies.
  - 3) The Warranty will start on the date the Owner's Representative issues the Letter of Substantial Completion unless otherwise specified.
  - 4) When the Owner makes written notification to the Manufacturer of failure of an item covered by this Warranty, the Warranty period will stop for the affected item or the portion of the affected item that failed, as applicable until the required repairs or replacements are made and accepted. All repaired or replaced items shall meet current specifications, unless otherwise specified in the Contract, and will be warranted for the remaining Warranty period.
  - 5) Warranty work shall be performed when weather permits. If, in the opinion of the Owner's Representative, temporary repairs are necessary, the temporary repairs will be made by the Owner or an independent contractor at the Manufacturer's expense. The Manufacturer shall replace all temporary repairs at no additional cost to the Owner.
  - 6) The Manufacturer shall provide all required traffic control during repair or replacement of failed items at no additional cost to the Owner.

- c. Trade Practice Guarantees - For those items installed on the Project that have customary trade practice guarantees, the Contractor shall furnish the guarantees to the Owner's Representative upon the issuance of Certificate of Substantial Completion of the Contract.

P. Trespass:

Contractor is responsible for its own, its agents' and employees', and its Subcontractor's trespass or encroachment upon or damage to property during performance of the Work.

Q. Use of Explosives:

Use of Explosives is not allowed.

R. Overtime Work:

1. The Contractor shall obtain approval from the Owner's Representative in order that the Work can be appropriately monitored.
2. The Owner's Representative may refuse the Contractor the right to perform overtime Work if the Owner does not have sufficient staff to inspect the work or when the Representative determines that the overtime is not in the public interest.
3. Work performed during overtime in the absence of the Owner's inspection or other staff must be performed at Contractor's expense unless expressly authorized.
4. This Article does not apply to labor performed in the manufacture or fabrication of any material ordered by the Contractor or manufactured or fabricated in any plant or place other than the Project Site where the main Contract is to be performed.
5. Pursuant to ORS 279B.235 and ORS 279C.520, no person shall be employed for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or where the public policy absolutely requires it, and in such cases, except in cases of contracts for personal services as defined in ORS 279C.100, the employee shall be paid (1) at least time and a half pay for all overtime in excess of eight hours a day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or (2) for all overtime in excess of 10 hours a day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and for all work performed on Saturday and on any legal holiday specified in ORS 279C.540. The Contractor shall give notice to employees who work on the Project in writing, either at the time of hire or before commencement of work on the Project, or by posting a

notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work. In the case of contracts for personal services as defined in ORS279C.100, an employee shall be paid at least time and a half for all overtime worked in excess of 40 hours in any one week, except for individuals under these contracts who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. sections 201 to 209 from receiving overtime. Persons employed under contracts for services shall receive at least time and a half pay for work performed on the legal holidays specified in a collective bargaining agreement or in ORS 279C.540 (1) (b)(B) to (G) and for all time worked in excess of 10 hours a day or in excess of 40 hours in a week, whichever is greater. The Contractor shall give notice to employees who work on a contract for services in writing, either at the time of hire or before commencement of work on the Project, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.

6. Pursuant to ORS 279C.830(1)(a), no person employed on the Project shall be paid less than the specified minimum hourly rate of wage in accordance with ORS 279C.838 and 279C.840.

S. Records:

1. The Contractor and its Subcontractors shall maintain all fiscal records relating to the Contract in accordance with generally accepted accounting principles. In addition, Contractors and Subcontractors shall maintain any other records necessary to clearly document their performance of the Work and any Claims for additional compensation or requests for additional Contract Time arising from or relating to their performance under the Contract. Contractors and Subcontractors shall make all records pertaining to their performance, any Claims or requests under the Contract accessible to the Owner at reasonable times and places, regardless of whether litigation has been filed as to such Claims.
2. The Contractor shall maintain all fiscal records in material compliance with generally accepted accounting principles and practices for the subject industry and adequate for the nature of the Contractor's business, and in such a manner that providing a complete copy is neither unreasonably time consuming nor unreasonably burdensome for the Contractor or the Owner. Failure to maintain the records in this manner shall not be an excuse for not providing the records.
3. The Contractor shall include in its subcontracts, purchase orders, and all other written agreements, a provision requiring all Subcontractors,

Material Suppliers and providers of rented operated Equipment at all tiers to comply with Article 1.

4. The Owner may, at reasonable times and places, have access to, and an opportunity to inspect, examine, copy and audit the books and records of any person who has submitted cost or pricing data according to the terms of a Contract to the extent that such books and records relate to such cost or pricing data. Any person who receives a Contract, for which cost or pricing data are required, shall maintain such books and records that relate to such cost or pricing data for three years from the date of Final Payment under the Contract, unless a shorter period is otherwise authorized in writing.
5. The Owner and its authorized representatives shall be entitled to inspect, examine, copy and audit the books and records of the Contractor and its Subcontractors and suppliers as provided in Article 1.12S. Such books and records shall be maintained by the Contractor and all Subcontractors, and kept accessible and available at reasonable times and places for a minimum period of three years from the date of Final Payment under the public Contract, or until the conclusion of any audit, controversy, litigation, dispute or claim arising out of, or related to, the public Contract.
6. Contractor shall produce all such records in Portland, Oregon, regardless of whether the records are produced pursuant to this provision of the Contract or as a result of a claim, litigation, arbitration or other proceeding. Contractor may produce the records elsewhere if it fully compensates the Owner for the reasonable costs of travel to and from the place where the records are produced and the reasonable cost of any employee's time in having to travel.

T. Partial Occupancy or Use:

1. The Owner may occupy or use any completed or partially completed portion of the Work, at any state of construction, provided such occupancy or use is not prohibited by regulatory agencies having jurisdiction over the Work.
2. The partial occupancy or use may commence before that portion is Substantially Complete. Before partial occupancy, the Owner's Representative and Contractor shall discuss payments, Retainage (if any), security, maintenance, utilities, damage to the Work and insurance, the period of time for correction and completion of the portion of the Work occupied and the commencement date of any applicable warranties and reduce matters of agreement to writing. Disputes about these matters shall be handled as provided by Article 1.18A.

3. Before partial occupancy or use, the Owner's Representative and Contractor shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work. Thereafter a list shall be prepared recording the items that need correction and completion. This list is not a "punch list" and does not represent that Substantial Completion has occurred. Either the Owner's Representative or Contractor may inspect the portion separately if the other refuses to join in an inspection in a timely fashion.
4. Partial occupancy or use of a portion or portions of the Work shall not constitute Owner's Acceptance of the Work, nor does it waive rights the Owner has to completion of the Contract in accordance with the requirements of the Contract Documents.
5. Owner also is entitled to occupy or use all or a portion of the work upon Substantial Completion. Occupancy or use upon Substantial Completion does not constitute Owner's Acceptance of the Work nor does it waive rights the Owner has to completion of the Contract in accordance with the requirements of the Contract Documents.

#### 1.13 PROSECUTION AND PROGRESS

##### A. Owner's Right to Do Work at Contractor's Expense:

1. If the Contractor refuses or fails to comply with the Contract Documents, the Owner may correct any deficiency or defect or perform work that the Contractor has failed to perform, or take other appropriate action without prejudice to any other remedy the Owner may have under the Contract. Before taking that action, the Owner will provide the Contractor and its sureties with seven (7) Days Notice of its intentions, unless an emergency or dangerous condition exists, in which case the action may be taken without Notice. Subject to Article 1.15H.6.c, in the event that the Owner performs part of the Contractor's work, corrects deficiencies or is required to take action as a result of an emergency or dangerous condition, the Owner will deduct the cost of that action from any payment then or thereafter due the Contractor. In the event that the cost of the Owner's action exceeds any sums held by Owner and otherwise payable to Contractor, Contractor agrees to reimburse Owner for any excess costs.
2. The Owner has the right to delete Work from this Contract and the parties agree that such action does not constitute a breach of Contract. Therefore, Owner may delete work from the Contract and perform it with its own forces or have such work performed by another contractor. If work is deleted from the Contract, the cost of performing such work will be deducted from the Contract Amount to be paid to

the Contractor. Any objections to the change in Contract Amount shall be processed as a Claim as required by Article 1.18A.

B. Subcontracting:

1. Contractors are responsible for performing the Work required by the Contract Documents. Use of Subcontractors is permitted. However, the use of Subcontractors, Material suppliers, Equipment suppliers or others to perform portions of the Work does not release the Contractor from any contractual obligation. The Contract awarded to the Contractor cannot be assigned or transferred to another person without the Owner's written approval.
2. The Contractor shall provide in all of its subcontracts that the Subcontractor, Material supplier and Equipment supplier shall be bound by the terms and conditions of this Contract.
3. All agreements, subcontracts and purchase orders executed between the Contractor and others for the Project must provide that they are assignable or otherwise transferable to the Owner at the Owner's option, in the event that this agreement is terminated for any reason. If the agreements, subcontracts and purchase orders are not assignable, the Contractor shall be liable for any additional costs incurred by Owner in procuring the same or substitute services, Materials, Equipment, supplies, or Parts.
4. The Contractor is required to execute written contracts with all Subcontractors. Submit to the Owner, one copy of each subcontract relating to the Work prior to any work being performed by the Subcontractor. The Contractor shall provide the Owner with one copy of each subcontract purchase order and supply agreement relating to the Work within three (3) Working Days of the executing the contract agreement or purchase order.
5. Substitution of Subcontractors shall be in accordance with Oregon Law. In addition, substitution of D/M/W/ESB/SDVBE Subcontractors requires notification to the Owner's Representative, approval of the Chief Procurement officer and good faith efforts to acquire a new Subcontractor, as more specifically provided in the Community Benefits Agreement Plan Specifications, which are hereby incorporated by reference.
6. Work Force – The Contractor shall remove from the job any laborer, worker, mechanic, foreman, superintendent, Subcontractor or other person who is found to be incompetent or who fails or refuses to perform the Work properly. In addition, the Contractor shall remove any person who disrupt the Work by being intemperate, troublesome, or disorderly. In doing so, the Contractor shall comply with the City's



Prohibition Against Workplace Harassment, Discrimination and Retaliation Rule (HR 2.02). If the Contractor refuses to take such actions, the Owner's Representative may order the person to be removed and those instructions shall be followed. Replacement of that person is at the Contractor's cost.

- C. Work Force: The Contractor shall remove from the job any laborer, worker, mechanic, foreman, superintendent or other person who is found to be incompetent or who fails or refuses to perform the Work properly. In addition, the Contractor shall remove any person who disrupt the Work by being intemperate, troublesome, or disorderly. In doing so, the Contractor shall comply with the City's Prohibition Against Workplace Harassment, Discrimination and Retaliation Rule (HR 2.02). If the Contractor refuses to take such actions, the Owner's Representative may order the person to be removed and these instructions shall be followed. Replacement of that person is at the Contractor's cost.
- D. Substitution of Materials and Equipment to be Incorporated into the Work:
  - 1. When the Contract Documents specify the Equipment or methods to be used, the Contractor shall use the Equipment or methods specified. Whenever a process is designated, or a manufacturer's name, brand or item designation is given, or whenever a process or material covered by patent is designated or described, it shall be understood that the words "or approved Equal" follows that name, designation or description. The Owner does not know, and cannot guarantee, however, that an "Equal" actually exists. If the Contractor submits a GMP assuming that the Owner will approve an Equal, it does so at its own risk, and remains responsible for providing the item specified in the event the proposed substitution is rejected.
  - 2. The Contractor may offer to substitute Materials, Products, parts or equipment of Equal or better quality and performance from those specified after execution of the Contract Documents. To do so, the Contractor shall submit any and all information to the Owner to show that the proposed substitution is Equal to or better than that specified by the Contract, including any and all information regarding changes to, or coordination with, any other portion of the Work, that may be affected by the substitution.
  - 3. The Owner's Representative has the sole discretion to accept or reject an offer of substitution. If the Owner's Representative accepts the proposed substitution, the Contractor may proceed to use the substituted Material, Product, Part or Equipment and incorporate it into the Work. Thereafter, the Contractor is legally responsible for the substitution. Acceptance by the Owner's Representative shall not relieve the Contractor from full responsibility for the efficiency, sufficiency, quality and performance of the substitution.

4. No substitutions can be made without written approval of the Owner's Representative. Any cost differential between what was originally specified and what was substituted and any change in Contract Time resulting from the substitution will be reflected in a Change Order executed before the substitution is effective. If no Change Order is executed before the substitution occurs, the Contractor waives its right to claims for increased Contract Amount or Contract Time.
5. If the Owner's Representative rejects the proposed substitution the Contractor shall proceed to follow the Contract Documents as originally drafted, without a change in the Contract Amount or Contract Time. Therefore, the Contractor shall not order Materials, Products, Parts or Equipment in anticipation of the substitution prior to the time that the offer of substitution is accepted.

E. Limitation of Operations:

1. General: The Contractor shall comply with all Contract provisions and shall:
  - a. Conduct the Work at all times so as to cause the least interference with traffic, the general public, and Owner personnel;
  - b. Not begin Work that may allow damage to Work already started.
  - c. Participate in Project activities prior to mobilization, including, but not limited to, meetings or trainings, as required by the Contract Documents.
2. Project Site Work: The Contractor shall not begin work on the Project Site until the Contractor has:
  - a. Received Notice to Proceed;
  - b. An approved Project Work Schedule;
  - c. An approved Traffic Control Schedule;
  - d. An approved Pollution Control Plan
  - e. An approved Erosion and Sediment Control Plan
  - f. Met with the Owner's Representative at the required preconstruction conference and provided information required by the Contract Documents;
  - g. Assembled all Materials, Equipment and labor so that Work and proceed according to the Project Work Schedule

- h. An approved Site-Specific Safety and Health Plan; and
- i. An approved shoring plan (if applicable).

F. Construction Schedules:

1. An accurate and regularly updated Construction Schedule is essential for Owner to monitor progress of the Work. The Contractor shall provide an updated Construction Schedule showing compliance with Contract Time as described in this Article. The Construction Schedule is intended to identify the sequencing of activities and time required for prosecution of the Work. The Construction Schedule is used to plan, coordinate, and control the progress of construction. Therefore, The Construction Schedule shall provide for orderly, timely, and efficient prosecution of the Work, and shall contain sufficient details to enable both the Contractor and Owner's Representative to plan, coordinate, analyze, document, and control their respective responsibilities under the Contract Documents.
2. A comprehensive construction schedule that is cost loaded and a detailed schedule of the first four (4) weeks shall be submitted by the Contractor at the preconstruction conference, unless requested at a different time by the Owner's Representative. The preconstruction conference is a meeting scheduled by Owner between the Owner and Contractor before work begins to discuss the Project.
3. Within 3 weeks of receipt of the Phase 2, Stage 1 Notice to Proceed or before starting Phase 2, Stage 2 NTP Work , whichever is earlier, and within 3 weeks of receipt of Phase 3, Stage 1 Notice to Proceed or before starting Phase 3, Stage 2 NTP Work, the Contractor shall submit for Owner's written review a revised comprehensive Construction Schedule based on the Contract Specifications, submittal review comments and feedback during the pre-construction conference meeting in the form required by the Contract Documents. If during the course of that review the Owner's Representative notices that the schedule conflicts in some way with the Contract Documents, that fact will be brought to Contractor's attention. However, failure to catch errors or inconsistencies in the schedule by Owner's Representative shall not relieve the Contractor from having to comply with the Contract Documents, or from finishing the Work within the Contract Time. Once accepted by the Owner, this revised comprehensive schedule will be considered the baseline schedule.
4. If it is desirable to carry on portions of the Work in more than one location simultaneously, Contractor shall submit a schedule for each

location at least four (4) weeks in advance of that activity, or at such other time as requested by the Owner's Representative.

5. In the event that the Contractor's proposed comprehensive Construction Schedule does not meet the requirements of the Contract, Contractor shall immediately resubmit a schedule that conforms to the Contract.
6. The Comprehensive Construction Schedule and the 4-week look ahead schedules must show the proposed sequence of Work, state the time required for completion of major tasks, and include all contract Milestones dates and reflect how the Work shall be completed to meet such Milestones. Construction Schedules shall take into account the passage and handling of traffic with the least practicable interference, and the orderly, timely, and efficient prosecution of work. Owner will use the Contractor's schedule to check on the progress of work, to coordinate related activities such as Utility relocation, to ensure adequate inspection resources, and to plan and coordinate surveying and testing.
  - a. The schedules shall be made using Primavera P6 (or Owner approved alternate) to produce a Gantt chart. Provide all schedules and schedule updates through Primavera Contract Management Software system (or Owner approved alternate).
  - b. When scheduling Work in public streets, the Contractor shall minimize the amount of time and extent that arterial and neighborhood streets are disrupted by Contractor operations. Treat each main or main segment independently of each other.
  - c. The Project schedules shall take into account the orderly, timely and efficient prosecution of the work and identify how water system constraints are met; including required shutdown times and connection work. The schedules shall indicate the Contractor's plan to accomplish the Work in sufficient detail to enable the Contractor and the Owner to plan, coordinate, appraise, document, and control their respective contract responsibilities.
  - d. The Contractor shall be responsible to coordinate Work scope with the activities and work of the Owner, other Utilities, agencies and Subcontractors accordingly. No additional compensation will be allowed for schedule, sequence or work conflicts.
  - e. The Work included in these plans and specifications is to be performed on an existing municipal water supply/distribution system that must continue in operation during construction. The Owner maintains sole discretion to approve, delay or deny shutdown of any facility if circumstances so dictate. The Contractor shall cooperate fully

at all times with the Owner to ensure that any interruption to water system operations is minimized and no contamination occurs. The Contractor shall plan ahead and coordinate with the Owner all shutdowns, abandonment and tie-in work necessary to facilitate construction.

- f. Incorporate into the Project schedules time for Owner to complete work identified as Owner work. Contractor shall provide unobstructed access to the areas of Owner work.
- 7. Contractor shall prepare and submit an updated comprehensive Construction Schedule every other month, whenever requested by the Owner's Representative or when substantial changes in the sequence, timing, or progress of Work require it. The Owner's Representative may request a revised comprehensive construction schedule at any time and, if so, Contractor shall provide one within seven (7) Calendar Days of the request.
- 8. In the event a schedule or revised schedule does not accurately reflect the Work, the Owner's Representative may direct that the Contractor's Work be suspended until satisfactory schedules are provided. The suspension will not entitle the Contractor to additional Contract Time or additional compensation. In addition, the Owner's Representative may withhold part or all of a progress payment until proper schedules and revised schedules are submitted.
- 9. The Contractor shall meet with the Owner's Representative once a week to discuss the progress of the Work. The Owner's Representative, Contractor, active subcontractors, and all other such representatives responsible for current progress or involvement in planning, coordination, or future activities shall attend construction progress meetings. Additional meetings may be required to ensure coordination between all construction activities, including; jurisdictions with authority over the Work, Material supplies, Equipment, sampling and testing. These additional meetings shall be scheduled at the discretion of the Owner's Representative. For progress meetings the Contractor shall be prepared to present and discuss the following:
  - a. Progress: Progress since the last meeting. Determine where each activity is in relation to the project schedule. Determine how to expedite construction that has fallen behind schedule and secure commitments from parties involved to do so. Discuss actions required to ensure completion of subsequent activities within the construction schedule requirements.
  - b. 4-Week Look Ahead Schedule Submittal: Activities expected to occur during the current week and the next three (3) weeks and shall coordinated and consistent with the comprehensive schedule.

- c. Updates to the Comprehensive Construction Schedule: Updates and revisions needed to the overall comprehensive Construction Schedule that impact latter work tasks, milestones, coordination with Subcontractors and other agencies, identified schedule constraints, Owner Work activities, critical path, completion time and float times.
- 10. The comprehensive Construction Schedule shall represent the Contractor's work plan. The Contractor shall ensure that all of the Work is described in the schedule and that it represents the sequence and time planned for the Work. Review of this and subsequent updates by the Owner shall not relieve the Contractor of responsibility for timely and efficient execution of the Contract. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures, and for coordinating all Work in accordance with and under the Contract.
- 11. The Contractor shall submit, with the comprehensive Construction Schedule, a schedule of work hours and shifts to the Owner's Representative for approval. During construction thereafter, notify the Owner's Representative of any changes in the work hours or shifts. Changes in work hours are subject to the Owner's approval.
- 12. Specified Contract Time Not Superseded by Schedule Revisions - The predicted completion date(s) for the Project Work Schedule shall be within the specified Contract Time(s) or adjusted Contract Time or as shown on pending requests for adjustments of Contract Time. If the Contractor believes that additional Contract Time is due, the Contractor shall submit, with the updated Project Work Schedule, a request for adjustment of Contract Time according to Article 1.13I.
- 13. Float Time - Float time shown on the Project Work Schedule, including any time between a Contractor's scheduled completion date and the specified Contract completion date, does not exist for the exclusive use of either party to the Contract and belongs to the Project.
- 14. Schedules Do Not Constitute Notice - Submittal of a schedule with supporting Project narrative does not constitute or substitute for any Notice the Contractor is required under the terms of the Contract to give the Owner.
- 15. Owner's Representative Review - The Owner's Representative review of the Contractor's schedules will not constitute a warranty or representation by the Owner that the Contractor can perform the Work according to such schedule. Review of the schedules by the Owner's Representative shall not relieve the Contractor of the responsibility for timely and efficient execution of the Contract and it does not void the sequencing and permit requirements.

16. Failure to Provide Schedule - The Comprehensive Construction schedule is essential to the Owner. The Contractor's failure to provide the schedule, schedule information, progress reports or schedule updates when required or requested may delay the Work and permits the Owner to take any actions necessary to protect itself and cause the schedule to be delivered, including, but not limited to, withholding Contract payments.

#### G. Meetings

1. Preconstruction Conference
  - a. After the Contract is Awarded unless otherwise approved by the Owner's Representative but before any Project Site work is performed, Contractor shall meet with the Owner's Representative for a pre-construction conference at a time mutually agreed upon. Contractor to invite a representative from each subcontractor to attend the preconstruction conference. Submit the following at the pre-construction conference:
    - 1) The names and telephone numbers of its Project Manager, Superintendent Office Manager and Erosion Sediment and Control Manager and a list of personnel authorized to sign change orders and receive progress payments;
    - 2) The name, address and telephone numbers of two or more persons employed by the Contractor who can be reached at any time of the day or night to handle emergency matters;
    - 3) A list of all Subcontractors that will work on the Project, a description of Work they will perform, and a contact list for each Subcontractor with phone numbers and address;
    - 4) A comprehensive Construction Schedule from issuance of Phase 2, Stage 2 Notice to Proceed through Substantial Completion as required by the Contract for Phase 2 Work and a comprehensive Construction Schedule from issuance of Phase 3, Stage 2 Notice to Proceed through Substantial Completion for the Project.
    - 5) A detailed 4-week look ahead schedule of the construction activities anticipated in the first four (4) weeks;
    - 6) Traffic Control Plan; for Project Site and off-site work,
    - 7) Erosion and Sediment Control Plan;
    - 8) A list of Materials suppliers and Products;

- 9) A list of all labor classes and Equipment (year, make, model) to be used on the Project;
  - 10) A detailed Schedule of Values based on the GMP and consistent with the comprehensive Construction Schedule.
  - 11) Copies of all subcontracts between the Prime Contractor and Subcontractor;
  - 12) Site Specific Safety and Health Plan (SSSHP);
  - 13) Utility Protection Plan;
  - 14) Pollution Control Plan;
  - 15) Labor Burdens information for Force Account Work; and
  - 16) Shoring Plan (if applicable).
2. Progress Meetings: Progress meetings shall occur once a week to discuss the progress of the Work.
    - a. The Contractor shall be in attendance at each weekly meeting.
    - b. At the weekly meeting, safety, schedule and outstanding issues will be discussed, amongst any other issues raised by the Owner's Representative.
    - c. A submittal log, RFI log, RFP, log, Change Order log and updated schedules required under Article 1.13F shall be provided for review and use at each weekly meeting, in addition to any other documents required by the Owner's Representative.
  3. Other Meetings; Other meetings may be required by the Owner's Representative as necessary to facilitate the progress of the Work.
  4. Attendance at Meetings; Attendance at meeting shall be required as follows:
    - a. For the preconstruction conference, the Contractor's Project Manager and Superintendent shall be in attendance. In additions, Subcontractors and other representative shall be in attendance as requested by the Owner's Representative.
    - b. For progress meetings, the Contractor's Project Manager and Superintendent shall attend all meetings. To the extent required by the Owner, the Contractor shall ensure the attendance of any Subcontractor or supplier at any meeting as indicated by the Owner's Representative.



#### H. Contract Time to Complete Work:

1. Contract Time will be expressed in one or more of the following ways:
  - a. By a calendar date on which the Work shall be completed; or
  - b. By a given number of Calendar Days.
2. Beginning of Contract Time: When Contract Time is expressed as a given number of Calendar Days, the date on which it will begin is the first Calendar Day following the date of the Notice to Proceed, unless the Notice to Proceed establishes a different date.
3. Contractor shall commence the CM/GC Work within 30 Days following receipt of Phase 2 Notice to Proceed. Prior to beginning Work at the Project Site, Contractor shall obtain approval as set forth in Article 1.13E.2.
4. Contractor shall provide the necessary labor, Equipment and Materials to ensure that the Work is completed within the Contract Time. If the Contractor does not complete the Work within the Contract Time, Owner is entitled to impose liquidated damages in addition to any other remedies Owner may have under the Contract Documents.
5. End of Contract Time; The end of the Contract time shall be the date of Final Completion as identified in the Certificate of Completion.

#### I. Adjustment of Contract Time:

1. The amount of Contract Time that a Contractor has to complete a Project may be adjusted, but only by Change Order.
2. The Owner has discretion to decrease the amount of Contract Time if a portion of the Work is eliminated and the amount of remaining Work to complete the Project will take less time. The Owner and Contractor shall try to reach an agreement regarding any reduction in Contract Time before the Owner's exercise of discretion.
3. Contract Time will be increased only if three events all occur:
  - a. The Contractor must encounter one or more Excusable Delays;
  - b. The Excusable Delay must be shown to have actually affected the overall completion date of the Project; and
  - c. The Contractor must give the Owner a request for an increase in Contract Time in the manner specified by Article 1.18A.

4. Excusable Delays alone do not justify an extension of Contract Time unless the two other factors noted in Article 1.13l.3 have occurred.

a. Examples of Excusable Delays include:

- 1) Act of God or nature;
- 2) Act of Public Enemy;
- 3) Act of Vandalism;
- 4) Strikes, labor disputes, or freight embargoes which, despite the Contractor's reasonable efforts to avoid, cause a shutdown of the entire Project or one or more controlling operations. A strike or labor dispute may involve a union bargaining with the Contractor, a Subcontractor, supplier or the Owner;
- 5) Suspension of the Work by written order of the Owner's Representative when the suspension is not because of Contractor's failure or neglect; or
- 6) Unusually severe weather. Unusually severe weather is weather that is abnormal compared to past weather at the same location for the same time of year, which actually has an adverse impact on critical work and which could not reasonably have been anticipated by the Contractor. Rain, windstorms, and other natural phenomena for the specific locality of Work, which might reasonably have been anticipated from the previous 10 years of historical records of the general locality of the Work shall not be construed as abnormal or unanticipated. However, it is agreed that rainfall greater than the following cannot be reasonably anticipated:
  - a) Daily rainfall equal to, or greater than 0.50 inch during a month when the monthly rainfall exceeds the normal monthly average by 25 percent or more; or
  - b) Daily rainfall equal to, or greater than, 0.75 inch at any time.

The office of the Environmental Data Service of the National Oceanic and Atmospheric Administration (NOAA) shall be considered the official agency of record for weather information and the closest reporting station nearest the locality of the Work shall be used to measure rainfall and other typical weather conditions. The Contractor is required to submit data from NOAA to substantiate delay based on weather impacts.

- 7) Unreasonable delays caused by actions of the Owner that delay an item of Work on the Project critical path schedule. Such delays might stem from errors, changes or omissions in the Plans, quantities or Specifications, and Extra Work if they meet the conditions stated in Article 1.13J.
  - 8) The Owner's direction to perform Extra or Changed Work.
- b. Examples of delays that are not Excusable Delays include:
- 1) Delays by Subcontractors or suppliers at any tier unless it can be shown that the delay was unforeseeable and not caused by any failure or neglect on the part of the Subcontractor or supplier;
  - 2) Delays that affect the Contractor's planned early completion, but do not affect the specified or adjusted Contract Time;
  - 3) Shortages of Materials or Equipment if the supplies, services, or Equipment were obtainable from other sources in sufficient time to permit the Contractor to meet the required schedule.
  - 4) Inadequacy or late delivery of Materials and Equipment;
  - 5) Financial difficulties;
  - 6) Lack of knowledge or other inability to perform;
  - 7) Labor problems other than the examples specified in Article 1.13I.4.a.4, above;
  - 8) Any requirement that the Contractor use equipment designated by the Owner for the Project ("sole source" equipment); and
  - 9) Time used by the Owner that is permitted by the Contract. Examples include the Owner's use of time to review Contractor requests for substitutions, Contractor requests for Proposals and Contractor Submittals.
  - 10) Delays resulting from the Contractor's failure to timely obtain an approved traffic control plans or resulting from a failure to timely obtaining other Contractor-procured permits.

J. Remedies for Delay:

1. The parties agree that the occurrence of an Excusable Delay that delays overall Project completion may not result in additional compensation paid to the Contractor. No additional compensation will be paid to Contractor for Excusable Delays that are not the fault of either the Contractor or Owner, such as those listed in Article

1.13I.4.a (1-6). In that situation, the Contractor is only entitled to an adjustment of Contract Time.

2. No additional compensation will be paid to Contractor for any time period when the overall Project completion date is delayed as a result of concurrent delay. Delays are considered to be concurrent when the Contractor encounters an Excusable Delay as defined in Article 1.13I.4.a, but also has caused its own delay to the Project for the same period of time. In that situation, the Contractor is only entitled to an adjustment of Contract Time for the length of the concurrent delay.
3. Additional compensation will may be paid to the Contractor if Excusable Delay as described in Article 1.13I.4.a are the sole reason that the overall Project completion date is delayed and the Contractor submits documentation evidencing that additional cost were incurred by the Contractor as a direct result of the extension of the Project completion date. No additional compensation is warranted for Excusable Delay if that delay does not affect the overall Project completion date.
4. When the Contractor is entitled to additional compensation for Excusable Delay, the compensation shall be calculated as provided in Article 1.17, as if it were Force Account Work, and only to the extent that the Contractor incurred additional costs for labor, Equipment and Materials as a result of the delay.
5. All adjustments of Contract Time will be solely for the period of time during which the overall Project completion date was actually delayed.

K. Time Is of the Essence:

1. Time is of the essence in this Contract. Accordingly, the Contractor agrees to complete the Work within the Contract Time.
2. Liquidated Damages:
  - a. If the Contractor fails to complete the Work within the original or adjusted Contract Time, the parties agree that Owner will be damaged and that the amount of damage to Owner and to the public will be difficult to determine. Therefore, Contractor agrees to pay the amount of liquidated damages stated in the Contract Documents. Liquidated damages will be measured not only by direct losses to the Owner as a result of delay, but intangible losses to the general public such as loss of use.

- b. Liquidated damages are assessed for each Calendar Day of delay, including holidays and weekends and shall run until Substantial Completion.
- c. Liquidated damages are intended to compensate Owner and the public for Contractor's delay in completion of the Work. The Owner has the right to recover additional damages that are not based solely on delay in addition to liquidated damages, such as the excess costs of re-procurement or completion, the costs of restoring uncompleted work, and costs paid to other contractors, or Owner's own employees, to complete the Work.
- d. Permitting Contractor to finish the Work, or any part thereof, after the original or adjusted Contract Time has expired, is not a waiver of Owner's rights under the Contract Documents, including Owner's right to recover liquidated or additional damages.
- e. Owner may retain liquidated damages from any payment or Retainage due to Contractor. Payment or assessment of liquidated damages does not release the Contractor's obligation to fulfill the entire Contract.

L. Suspension of Work:

- 1. The Owner has the authority to suspend all, or part of, the Work as provided below:
  - a. The Owner's Representative has authority to suspend all or part of the Work of the Contract as provided by Law.
  - b. If suspension occurs for Owner convenience or at the direction of the federal government, as a result of the operation of Law, such as an injunction issued by the court or a directive from the federal or state government, Contractor shall be provided an adjustment of Contract Time corresponding to the period of the suspension and shall be reimbursed for its Direct Costs and Markup incurred as a result of the delay as set forth in Payment for Changed or Extra Work. However, if performance of Work would have stopped as a practical matter for other reasons irrespective of Owner convenience, such as unusually adverse weather conditions or other Excusable Delays noted in Article 1.13L.4, then no additional compensation will be provided.
  - c. The Contractor is responsible for protecting the Work already performed during the period of suspension. It also shall provide temporary protection devices to warn, safeguard, protect and inform traffic and the public during this same time. Costs are recoverable for such measures only if provided in Article 1.13L.1.b above.

- d. The Owner is also entitled, but not required, to suspend work on the Project if the Contractor has failed or neglected to perform Work in the manner required by the Contract or if the Contractor has created any unreasonable risk to safety. Contractor is not entitled to any additional compensation or Contract Time if suspension occurs because the Contractor has failed or neglected to carry out any provision of the Contract.
- e. Work shall resume as soon as possible after the Contractor receives written Notice that the Owner has canceled the suspension of Work.

M. Termination of Right to Proceed:

1. Termination for Default:

- a. The Owner has the right to terminate the Contractor's right to proceed with all or any portion of the Work if the Contractor is found to be in default of its obligations under this Contract. Default will occur if:
  - 1) The Contractor refuses or fails to prosecute the Work or any separate part of the Work, with the diligence that will ensure its completion within the time specified in this Contract Documents including any extension of Contract Time that has been granted;
  - 2) The Contractor fails to construct the Project in accordance with the Contract Documents, or fails to follow the directions of the Owner's Representative;
  - 3) The Contractor is adjudged a bankrupt or has made a general assignment for the benefit of creditors; or
  - 4) The Contractor fails to comply with other provisions of the Contract Documents or disregards any Law.
  - 5) The Contractor otherwise fails or refuses to perform according to the Contract Documents.
- b. If the Contractor is in default, the Owner will send Notice to the Contractor and all of its sureties of its intention of terminating the Contractor's right to proceed with the Work in writing no less than seven (7) Days in advance of the date of the actual termination. The Contractor and the sureties are notified if the Notice is sent to the last known address provided to Owner by the Contractor and its sureties. For purposes of computing time in this Article, the first Day counted will be the Day that the Notice is mailed or sent by the Owner.
- c. When termination occurs, the Owner may take over the Work and complete it, and may take possession of any Materials, tools, plant

and appliances thereon, as well as all other Materials whether on the premises or not, for which the Contractor has received whole or partial payment that are necessary to complete the Work. The Contractor and its sureties shall be liable for any damage to the Owner resulting from the Contractor's default, whether or not the Contractor's right to proceed with the Work is terminated. This liability includes any costs incurred by the Owner in completing the Work that exceed any remaining Contract Amount balance.

- d. When termination occurs, the Owner may elect to have the Contractor assign any and all subcontracts and material contracts to Owner or to the Owner's designee, which may be another Contractor. Contractor shall execute such assignments within four (4) Calendar Days of their receipt.
- e. Upon termination, Owner will make no further payments to Contractor. Contractor shall receive additional payment for Work performed prior to termination only if the cost of completion of the Work is less than the Contract balance held by Owner.
- f. If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties, including the right to any damages, will be the same as if the termination had been issued for the convenience of the Owner as provided in Article 1.13M.2. below.
- g. The rights and remedies of the Owner in this Article are in addition to any other rights and remedies provided by Law or elsewhere in the Contract Documents.

2. Termination for Public Convenience:

- a. The Owner may terminate performance of Work under this Contract in whole, or in part, if the Owner determines that a termination is in the Owner's interest.
- b. The Owner will notify the Contractor and its sureties in writing when it decides to terminate a Contract for convenience no less than seven (7) Days in advance of the date of the actual termination. The date of termination, which is the date after which no Work shall be performed, shall be stated in the Notice. Notice shall be deemed to have been given if sent to the Contractor's or any Surety's last known address provided to Owner by the Contractor and its sureties. For purposes of computing time in this Article, the first Day counted shall be the Day that the Notice is mailed or sent by the Owner.

- c. After Receipt of a Notice of termination, and except as directed by Owner, the Contractor shall immediately proceed with the following obligations;
- 1) Stop work by the date as specified in the Notice;
  - 2) Award no further subcontracts nor place further orders for Materials, services, or facilities, except as necessary to complete the continued portion of the Work, if any;
  - 3) Terminate all Subcontractors and orders to the extent that they relate to the Work terminated;
  - 4) Assign to the Owner, if directed by the Owner's Representative, all right, title and interest of the Contractor under the subcontracts terminated, in which case the Owner will have the right to settle or to pay any termination settlement proposals arising out of those terminations;
  - 5) With approval or ratification to the extent required by the Owner, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause;
  - 6) As directed by the Owner, transfer title and deliver to the Owner, (a) the fabricated or unfabricated Parts, work in process, completed Work, supplies and other Materials produced or acquired for the Work terminated, and (b) the completed or partially completed Plans, Drawings, information and other property that, if the Contract had been completed, would be required to be furnished to the Owner;
  - 7) Take any actions that may be necessary, or that the Owner's Representative may direct, for the protection and preservation of the property related to this Contract that is in the possession of the Contractor and in which the Owner has or may acquire an interest; and
  - 8) Use its best efforts to sell, as directed or authorized by the Owner's Representative, any property of the type referred to in Article 1.13M.2.c.6 above; provided, however, that the Contractor (a) is not required to extend credit to any purchaser and (b) may acquire the property under the conditions prescribed by, and at prices approved by, the Owner's Representative. The process of any transfer or disposition will be applied to reduce any payments to be made by the Owner under this Contract, credited to the price or cost of the work, or paid in any other manner directed by the Owner's Representative.



- d. Upon termination, the Owner will pay the Contractor the following costs as a result of the termination and no other:
  - 1) In regard to the Work performed before the effective date of termination, the total (without duplication of any items) of the following costs:
    - a) The cost of this Work, as determined by the method of payment established by the Contract Documents;
    - b) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the Contract if such costs are not included in Article 1.13M.2.d.1.a above and if the Owner does not have the contracts assigned for the purpose of settlement; and
    - c) A sum as profit on Article 1.13M.2.d.1.a. above, not to exceed 10 percent of that amount, unless it appears that the Contractor would have sustained a loss on the entire Contract had it been completed. However, no profit is permitted on costs compensated under Article 1.13M.2.d.1.b.
  - 2) The reasonable costs of settlement of the Work terminated, including:
    - a) Accounting, clerical and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data, except that no allowance will be made for costs incurred as attorney fees;
    - b) The termination and settlement of Subcontractors (excluding the amounts of such settlements); and
    - c) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection or disposition of the termination inventory.
- e. No other costs other than those allowed in Article 1.13M.2.d. shall be paid. By way of example only, and not by way of limitation, costs that would not be allowed include anticipated profits on unperformed Work, consequential damages, post-termination overhead, Bid or Proposal preparation costs, costs for retraining employees, depreciation on idle equipment, cost of common items reasonably usable on the Contractor's other work and costs unrelated to the work performed prior to the date of termination.

- f. The Owner may deduct from any sums otherwise due the Contractor under Article 1.13M.2.d. above, the cost of advance payments made to the Contractor under the terminated portion of this Contract, any Claim which the Owner has against the Contractor whether or not arising from this Contract, and the agreed price of, or proceeds of sale of, Materials, supplies or other things acquired by the Contractor or sold under the provision of Article 1.13M.2.c.8. above, and not recovered by or credited to the Owner.
- g. Payment from the Owner is not due until the Contractor has submitted an itemization of its recoverable costs to the Owner in writing, together with supporting documentation. The Contractor shall supply additional supporting documentation upon request by the Owner in order to recover its costs.
- h. The Contractor shall maintain all records and documents relating to the termination until the Owner and the Contractor resolve the amount of costs to be paid by the Owner to the Contractor as a result of this termination. Such records shall be made available to the Owner within 30 Days of the request.

N. Subcontractor Termination Claims:

- 1. This Article establishes the procedure and provides additional details regarding costs allowed by Article 1.13M.2 when a Contractor must terminate subcontracts when its own Contract has been terminated for convenience. It is not applicable if the Contractor assigns its subcontracts to Owner for the purpose of settling or paying termination settlements to those Subcontractors as provided in Article 1.13M.2.c.
- 2. The Contractor shall reach a binding agreement with the Subcontractor before the Contractor can recover from the amount of the Subcontractor's Claim from the Owner. That agreement shall be reached before the Contractor presents its Claim to the Owner. Contingent agreements with Subcontractors are prohibited.
- 3. The Owner is only liable for reasonable settlement costs between the Contractor and its Subcontractors. Therefore, if the Contractor has agreed to pay an unreasonable amount to a Subcontractor by way of settlement, the Owner is liable only for reasonable costs incurred in that settlement. Reasonable settlement costs do not include the Subcontractor's anticipated profits on unperformed work or consequential damages, or costs similar to those excluded by Article 1.13M.2.e.

## 1.14 MEASUREMENT OF PAY QUANTITIES

### A. Scope

1. To the extent applicable, the Owner's Representative will measure pay quantities for accepted Work according to the United States standard measure unless otherwise provided in the Contract Documents, including, but not limited to, when compensation will be based on Unit Prices for Pay Items set forth in a Schedule of Values.
2. Unless otherwise specified in the Contract Documents, the measurement provisions contained in the Contract Documents or Schedule of Values will supplement or modify the above convention by:
  - a. Imposing measurement limitations
  - b. Describing measurement or computation procedures
  - c. Giving conversion factors or adjustment conditions
  - d. Providing for determination of reasonably accurate and representative Pay Item or Schedule of Values quantities.
3. Measurements required or allowed to be made by the Contractor will be subject to the Owner's Representative's verification. The Owner's Representative's decision about measurement is final. Unless otherwise specified in the Contract, the Owner's Representative will round off all quantity computations using the following convention:
  - a. The final significant digit will not be changed when the succeeding digit is less than five (5).
  - b. The final significant digit will be increased by one when the succeeding digit is five (5) or greater.

- B. Compensation Where Pay Quantities Are Not Measured – Where the compensation under the Contract is based on a Lump Sum amount, pay quantities shall not be measured and the Schedule of Values shall be used to determine the amount of the compensation owed to the Contractor based on the percentage of completion of the Work as determined by the Owner's Representative.

### C. Measurement Guidelines

1. Unit Basis: Unit will be each, unless otherwise specified in the Contract and will be determined by actual count of units in place.

2. Length Basis: Length will be feet or mile, unless otherwise specified in the Contract and will be determined by measuring the length at least to the nearest 0.1 foot or at least to the nearest 0.1 mile, as applicable, unless otherwise specified in the Contract. Measurements will be limited to the dimensions shown or specified in the Contract Documents, or as directed by the Owner's Representative.
3. Area Basis: Areas will be square foot, square yard, or acre, unless otherwise specified in the Contract and will be determined by measuring the width and the length (or height) at least to the nearest 0.1 foot and computed at least to the nearest 0.1 square foot, nearest 0.1 square yard, or nearest 0.1 acre, as applicable, unless otherwise specified in the Contract.
4. Weight Basis: Weight will be pound or ton, unless otherwise specified in the Contract and will be determined as follows:
  - a. Pound: Pound weight will be determined by the net weight identified on the manufacturer's packaged labels, subject to periodic check weighing. Weight by pound will be measured at least to the nearest 1.0 pound unless otherwise specified in the Contract. Provide a certificate with each shipment together with a certified copy of the weight of each delivery. If the check weight is less than the manufacturer weight by more than 0.4%, the discrepancy will be resolved by the Owner's Representative.
  - b. Ton: Ton weight will be determined on scales as required unless otherwise allowed by the Specifications. Weight by ton will be measured at least to the nearest 0.01 ton unless otherwise specified in the Contract.
  - c. If bituminous materials, Portland cement, lime, and similar bulk Materials are shipped by truck or rail, the supplier's shipping invoice with net scale weights, or volumes converted to weights, may be used for Pay Item quantity determination in place of weights determined on vehicle scales.
  - d. Shipping invoice weights of the supplier's truck or transport shall be subject to periodic check weighing on vehicle scales, or other Owner's Representative approved scales. If the check weight is less than the supplier weight by more than 0.4%, the discrepancy will be resolved by the Owner's Representative.
  - e. No payment will be made:
    - 1) For quantities in excess of the supplier weight.

- 2) When materials have been lost, wasted or otherwise not incorporated into the Work.
  - 3) For additional hauling costs resulting from the checking weight.
5. Volume Basis:
- a. Volume will be cubic yard truck measure or in-place measure, gallons, foot board measure (FBM), or thousand foot board measure (MFBM), unless otherwise specified in the Contract and will be measured at least to the nearest 0.1 cubic yard, nearest 1.0 gallon, nearest 0.1 FBM, or nearest 0.1 MFBM, as applicable, unless otherwise specified in the Contract.
  - b. Truck measure will be the measured and calculated maximum "water level" capacity of the vehicle. Quantities will be determined at the point of delivery, with no allowance for settlement of Material during transit. When required to facilitate measurement, the vehicle load shall be leveled at the point of delivery. Payment will not be made for Material in excess of the maximum "water level" capacity. Deductions will be made for loads below the maximum "water level" capacity.
  - c. When bituminous materials are measured by volume, the volume will be measured at 60 °F or will be corrected to the volume at 60 °F using the correction factors found in the MFTP (ODOT TM 321).
6. Time Basis: Time will be hour, Day, or year, unless otherwise specified in the Contract, and will be measured to at least the nearest 0.5 hour, nearest 1.0 Day, or nearest 1.0 year, as applicable, unless otherwise specified in the Contract.
7. Standard Manufactured Items: If standard manufactured items, such as fence, wire, plates, rolled shapes, pipe, conduit and other similar items are specified in the Contract by properties such as gauge, unit weight, or section dimensions, the manufacturing tolerances established by the industry involved will be accepted unless more stringent tolerances are cited in the Contract Documents.
8. Lump Sum Basis: Work compensated by Lump sum, shall be completed and accepted without measurement unless changes are ordered in writing by the Owner's Representative. If estimated quantities of the Work to be performed are listed in the Contract Documents, they provide only a basis for adjusting payment amounts. Estimated quantities are approximate only, and are made from a reasonable interpretation of the Plans and Specifications. Computations based on the details and dimensions shown on the Plans or Specifications are not guaranteed to equal estimated quantities.

- a. If the Owner issues no Change Order, the Owner will make no pay adjustment for quantities based on the Contractor's computations that overrun or under run the estimated quantities.
- b. If the Owner issues Change Orders for changes in the Work, the Owner's Representative will measure such changes according to the standards set by Article 1.16B to determine adjustment of payment.

## 1.15 PAYMENT

### A. Scope and Limit:

- 1. The CM/GC's Fee:
  - a. The CM/GC's Fee will be the percentage of the Reimbursable Costs of the Work included in the GMP or as modified by Change Order.
  - b. The Fee shall not be adjusted downward if the actual Reimbursable Costs of the Work is less than identified in the GMP.
  - c. The Fee shall not be increased should the actual Reimbursable Costs of the Work exceed that identified in the GMP.
- 2. The GMP is full compensation for furnishing all materials, Incidental Work, Equipment, tools, labor and incidentals necessary to perform the Work in compliance with the Contract Documents, and for all fees, risk, loss, damage or expense arising from the nature or prosecution of the Work or from the action of the elements. In addition, the GMP includes all costs necessary for the CM/GC to provide a fully functioning and operational facility as described in the Contract Documents, complete in every detail. In addition, comply with all applicable Laws and regulations for applicable to the Work and the Project that are within the GMP.

### B. Changes to Plans or Character of Work:

- 1. Unless changes and alterations in the Plans, or quantities or details of construction materially change the character of the work to be performed or the unit costs thereof, the Contractor shall accept as payment in full, so far as Contract Pay Items are concerned, payment at the same Unit Prices as are provided under the Contract for the accepted quantities of work done.

### C. Progress Payments:

- 1. The Owner will pay the Contractor its actual Contract Amount up to, but not exceeding, the GMP. See Article 1.09A regarding the Owner's Representative's authority.

- a. The Contractor shall submit the Schedule of Values no later than the preconstruction conference. The schedule shall reflect the detailed estimates, including Lump Sums and Unit Prices prepared at the time GMP was approved. The schedule shall provide a breakdown as follows:
  - 1) Correlate line items in the Schedule of Values with other required schedules and forms, including: Construction Schedules, Application for Payments, and list of Submittals, Subcontractors, Products, suppliers and fabricators.
  - 2) The Schedule of Values shall be organized by major work items, Construction Specifications Institute (CSI) subgroup, division or subdivision or other organization reflecting the detail used to develop the GMP.
  - 3) Round amounts to nearest whole dollar; the total shall equal the Contract Amount.
  - 4) Each item in the Schedule of Values and Applications for Payment shall be complete. Include the total cost and proportionate share of the CM/GC Fee.
  - 5) The Schedule of Values shall identify any Allowance identified by Owner.
- b. Update and resubmit to the Owner's Representative the Schedule of Values when Construction Change Directives are issued or when Change Orders change the Contract Amount. Progress payments will be based on the performance to date based on the Schedule of Values submittal that the Owner has returned and marked "no exceptions taken".
- c. The Owner's Representative may reject any portion of any Schedule of Values that is reasonably believed to not reflect an accurate estimation of costs and substitute a fair estimate. Rejection of any part of the Schedule of Values does not change any subcontract amount entered into by the Contractor. Failure to object to any portion of the Schedule of Values is not an indication that the Owner's Representative agrees that the costs listed are accurate. Instead, the Schedule is used only for the purpose of making payments.
- d. The Owner will use the Schedule of Values only for the purpose of making interim progress payments to the Contractor. However, because such payments are based on cost estimates, and not on actual costs, the progress payments may or may not, be the same as the amount of Reimbursable Costs owed to the Contractor. At the conclusion of the Work, and before Final Payment is due, the owner

may audit or otherwise review the Contractor's records to determine the Contractor's actual expenses on the Project and the amount of Reimbursable Costs that it is owed pursuant to the Contract Documents.

- e. If the review or audit discloses that the amount actually paid to the Contractor is greater than the amount of reimbursable costs and the CM/GC Fee owed to the Contractor pursuant to these Contract Documents, then the Owner shall be entitled to a credit, which may be deducted from the amount of the Final Payment or otherwise charged to the Contractor. If the review or audit disclosed that the amount actually paid to the Contractor is less than the amount of reimbursable costs and the CM/GC Fee owed to the Contractor pursuant to the Contract Documents, then the Owner will pay the Contractor any additional amount owed as part of the Final Payment.
- 2. The GMP is the maximum amount of compensation to be paid to the Contractor for all work on the Project of whatever nature, including all Incidental Work, such as, but not limited to, formwork, falsework, shoring, and cribbing that is necessary to perform the Work.
- 3. The Contractor shall comply with ORS 279C.845 and submit weekly certified payroll forms as required by the Oregon Bureau of Labor and Industries and shall ensure all Subcontractors do the same.
- a. Pursuant to ORS 279C.845(7), the Owner will retain 25 percent of any amount earned by the Contractor on this public works project until the Contractor has filed the certified statements required by Law. The Owner will pay to the Contractor the amount retained under this Section within 14 Days after the Contractor files the required certified statements, regardless of whether a Subcontractor has failed to file certified statements. The Owner is not required to verify the truth of the contents of certified statements filed by the Contractor under this Section.
- b. Pursuant to ORS 279C.845(8), the Contractor shall retain 25 percent of any amount earned by a first-tier Subcontractor on this public works project until the first-tier Subcontractor has filed with the Owner the certified statements required by Law. Before paying any amount retained under this Article, the Contractor shall verify that the first-tier Subcontractor has filed the certified statement. Within 14 Days after the first-tier Subcontractor files the required certified statement the Contractor shall pay the first-tier Subcontractor any amount retained under this Article. Neither the Owner nor the Contractor is required to verify the truth of the contents of certified statements filed by a first-tier Subcontractor under this Section.



4. Contractor shall submit preliminary Operations and Maintenance (O & M) Manuals on or before the payment request indicating the Bull Run Filtration Project Phase 3 Milestone is 75% completed. Updated comprehensive schedules, As-Builts for work completed during the month and monthly utilization reports, certified class payroll and other required monthly forms must be submitted with the monthly payment request.

D. Mid-Month Payment

1. The Owner will pay the Contractor two times per month on this Project as set forth below. Because Owner wants to ensure that Subcontractors are paid amounts owed in a timely fashion, Contractor is required to make payments to its Subcontractors twice per month as well. Contractor has no discretion to only accept one payment per month to avoid this obligation.
  - a. On the 15<sup>th</sup> of each month, the Contractor shall submit a good faith estimate of the value of the Work performed that was not included within the Contractor's previous progress payment, if any. The Contractor's estimate shall be calculated in the manner otherwise established by the Contract Documents, whether that is based on Unit Prices, Lump Sum amounts, a Schedule of Values, a combination of these methods or otherwise.
  - b. The Owner may either approve the Contractor's estimate or prepare its own estimate of the Work performed if the Contractor fails to prepare one on time or the Contractor's submission appears to be incorrect. Within 15 Days of approval, the Owner will pay the Contractor an advance payment based on the Contractor's estimate or the Owner's estimate, whichever is applicable, but in no event shall the payment be made later than 30 Days after receipt of the Contractor's estimate to the extent provided and not disputed. Owner may withhold money from the advance for any of the reasons specified in Article 1.15G.3. The Owner is not required to pay for any portion of the Work that is disputed.
  - c. The "mid-month" or advance payment will be taken into account and deducted from any amount otherwise due the Contractor on the end of the month progress payment, or any subsequent advance payment or progress payment.
  - d. Because the payment is an advance not otherwise required by Law, the Contractor agrees that the only dispute about the amount of the advance payment is whether the Owner prepared its own estimate in good faith. The Contractor acknowledges the advance payment is simply a rough estimate made for the purpose of providing the Contractor and its Subcontractors with funds in advance of the

progress payment and is not intended to represent the exact amount owed.

- e. The Owner's Representative may request additional documentation from the Contractor to verify any estimate submitted or may instead calculate the Owner's own estimate. If requested, Contractor shall provide documentation to establish its estimate within three (3) Working Days. Failure to provide additional documentation when requested precludes any dispute whether the amount of the Owner's estimate was calculated in good faith.
- f. Owner has discretion not to make an advance payment if the amount of work performed by the 15<sup>th</sup> of any month is \$5,000 or less, or if there is a chance that the advance payment might exceed the remaining amounts due the Contractor under the Contract, or if correction or repairs are required to be performed by the Contractor but only in the amount equal to the estimated cost for such corrections or repairs.
- g. Because the mid-month payment is an advance on the monthly progress payment, no interest is due on the advance payment until the time when interest would be due under the progress payment.
- h. Within ten (10) Calendar Days from the date that any payment is sent by Owner to Contractor, Contractor shall pay its Subcontractors for Work performed during the period covered by the application for payment regardless if the Subcontractor agrees to some different schedule. The Contractor is required to take all necessary good faith actions to ensure that it makes payment to its Subcontractors. In the event of a dispute, the Contractor shall pay the portion not in dispute and timely resolve the amount that is in dispute.
- i. Upon request from Owner, Contractor shall inform Owner of the portion of any advance payment owed to any of its Subcontractors.
- j. Nothing in Article 1.15D requires the Contractor to pay its Subcontractors for any portion of the Work that is disputed or which otherwise would not be eligible for payment.

#### E. Monthly Progress Payment

- 1. In addition to the mid-month payment described in Article 1.15D, the Contractor shall be paid a monthly progress payment as described in more detail in Articles 1.15E.2 and 1.15E.3. To receive a monthly progress payment, the Contractor first shall estimate the work performed in any calendar month and submit an invoice to the Owner's Representative for approval before the fifth Day of the following month based on the estimate. The invoice shall include the

value of labor performed and materials incorporated into the project since the work began or the last invoice, whichever is applicable. The estimate may be an approximation of the work, labor and materials provided, but should bear a reasonable relationship to the entire Contract Amount due once the project is completed.

2. Where the invoice is filled out incorrectly or where there is any defect or impropriety in any submitted invoice or when there is a good faith dispute, the Owner's Representative will so notify the Contractor within 15 Days stating the reason or reasons the invoice is defective or improper or the reasons for the dispute. A defective or improper invoice, if corrected by the Contractor within 7 Days of being notified by the Owner, shall not cause a payment to be made later than 30 Days after receipt of the original invoice from the Contractor or 15 Days after the payment is approved by the Owner's, which is the earlier date.
3. The Owner's Representative will approve of payment to the Contractor depending on how costs are calculated in the Contract Documents.
  - a. If the Contract Documents establish Unit Prices to accomplish various portions of the Work, the Unit Prices shall be used to determine payment.
  - b. If the Contract Documents establish a Lump Sum for the performance of the Work, payment will be made in accordance with any Schedule of Values submitted by the Contractor and approved by the Owner and based on the percentage completion of that item of Work. If no Schedule of Values was submitted, or if a Schedule of Values is submitted by the Contractor that does not fairly reflect the cost of the Work to be performed, the Owner's Representative will determine a fair and equitable payment based on the percentage of the Work performed compared to the entire Contract.
  - c. If the Contract Documents establish a Lump Sum for a portion of the Work and Unit Prices for other portions of the Work the Owner's Representative will approve of payment utilizing both methods (a) and (b) established above.
  - d. If the Owner approved Contract Schedule of Values shows an Allowance, the Contractor shall submit invoices and other documentation showing its reimbursable costs incurred in performing the item of work with which the Allowance is associated. Owner will pay Contractor's reimbursable costs of the Work for performing the item with which the Allowance is associated until the Contractor's reimbursable costs exceed the amount of the Allowance. Under no circumstances shall Contractor be entitled to recover more than its

actual costs. In addition, Contractor cannot recover more than the total amount of the Allowance, even if its actual costs exceed that amount.

- e. The monthly progress payment invoice shall deduct any payments made by the Owner as an advance payment as explained in Articles 1.15D.1 and 1.15E.1 above.
- f. Nothing in this Article shall waive or otherwise release any rights that the Owner may have under this Contract.

F. Advance Payment for Materials:

- 1. The Owner's Representative has discretion, but is not required, to approve payments to the Contractor of up to 85 percent of the Schedule of Values, or the itemized Materials and Equipment that will be incorporated into the Work that are not yet incorporated if the following conditions are met:
  - a. The value of the Materials or Equipment shall be greater than \$5,000;
  - b. The Contractor submits bills of sale or other documentation satisfactory to Owner establishing the Contractor's proof of payment and title to the Materials or Equipment and the Materials and Equipment are free and clear of liens, claims, security interests or other encumbrances. When payments are made, the Contractor guarantees that title to all Materials and Equipment covered by a progress payment, whether incorporated in the Project or not, will pass to the Owner upon receipt of such payment by the Contractor, free and clear of all liens, claims, security interests or encumbrances;
  - c. The Contractor shall protect the Owner's interest in the Materials or Equipment, including applicable Contractor Furnished Insurance and transportation to the Project Site. In no event shall payment for such Materials require the Owner to pay for replacement Materials if the original Materials or Equipment for which payment was made are damaged or destroyed prior to their incorporation into the Work. By submitting a request for payment, the Contractor accepts full responsibility to continue to protect the stored materials and equipment from the elements and against loss or damage;
  - d. The Materials or Equipment meet Contract requirements, proof that the Materials or Equipment conform to Contract requirements has been provided to Owner, are in a form ready for incorporation into the Project and are clearly marked and identified as being specifically fabricated, produced and reserved for use on the Project; and
  - e. The Materials shall have been delivered or acceptably stored or stockpiled in accordance with the Specifications and as follows:

- 1) At the Project Site;
  - 2) On Owner property;
  - 3) On property in the Portland Metro area on which the property owner has authorized storage in writing. The written authorization must allow the Owner to enter upon the property and remove Materials or Equipment for at least 6 months after Final Completion of the Project. The Contractor shall furnish a copy of the written permission to the Owner; or
- f. Discounts received as a result of early payment shall be shared with the Owner according to the proportions detailed in Article 1.07G.2.g.5.

G. Retainage and Withheld Amounts

1. The Owner has discretion to withhold amounts from any progress payment otherwise due the Contractor if it receives claims for damages or costs from third parties as a result of the Contractor's operations and the Owner determines such withholding is necessary to protect the Owner's interests. Such withholding may continue until the claim is resolved.
2. The Owner will retain and hold back up to 5 percent of amounts otherwise due the Contractor as "Retainage." Retainage will be held and paid to the Contractor as part of the Final Payment of the Contract Amount. Alternatives to cash retainage, if approved by the Owner, shall be as permitted by ORS 279C.560.
  - a. As work progresses, the Owner may reduce the amount of the Retainage and may eliminate Retainage on any remaining monthly Contract payments after 50 percent of the Work under the Contract Documents is completed if, in the Owner Representative's opinion, the Work is progressing satisfactorily. Elimination or reduction of Retainage shall be allowed only upon written application by the Contractor, which application shall include written approval of the Contractor's Surety.
  - b. When the Work is 97 ½% completed the Owner may, at its discretion and without application by the Contractor, reduce the Retainage to 100% of the value of the Contract Work remaining to be done.
  - c. If the Contract price exceeds \$500,000, the Owner shall place amounts deducted as retainage into an interest-bearing escrow account. Interest on the retainage amount accrues from the date the payment request is approved by the Owner until the date the retainage is paid to the Contractor to which it is due.

3. The Owner's Representative may disapprove a payment previously made, withhold money from a future progress payment, or disapprove of an invoice submitted by the Contractor in whole or in part, if:
  - a. The Work has not progressed to the point indicated by the Contractor's submittal;
  - b. Defective, unsatisfactory or improper work is discovered;
  - c. The Contractor fails to make payments to employees, Subcontractors and suppliers as required by the Contract;
  - d. The Contractor violated material terms and conditions of the Contract Documents that remains to be remedied;
  - e. The Contractor performed unsatisfactory work for which payment was sought;
  - f. The Owner has a monetary claim against the Contractor that the Contractor has not yet paid;
  - g. Failure to submit a Construction Schedule or updated schedule required by the Contract Documents;
  - h. Failure to submit a Schedule of Values or updated Schedule of Values as required by the Contract Documents;
  - i. The Contractor was exceeding the limits of Work Specified in Contract Documents or other work limits specified by the Contract; or
  - j. The Contractor owes liquidated damages to the Owner.
  - k. The Contractor fails to submit certified payrolls per Article 1.15C.3.
4. The Contractor is not entitled to interest on money purposely withheld for any of the reasons specified in Article 1.15G.3.
5. Progress payments reflect the Owner's Representative's best judgment about payment at the time payment is made. Such payments, however, do not constitute Acceptance of the Work.
6. The Contractor shall provide the Auditor's Office with a list of personnel authorized to receive Contract payments. No payment will be released to an unauthorized person. In addition, no payment will be made if the estimate submitted by the Contractor is less than \$5,000, unless approved in advance by the Owner's Representative.

7. If the Contractor fails to make timely advance payments or progress payments to its Subcontractors, the Owner is entitled to take any action permitted by Law, including, but not limited to, the following:
  - a. Withhold all or a part of any progress payment until Contractor makes payment;
  - b. Impose liquidated damages in the amount of \$250 per Day for each Day that the payment is delayed by acts or omissions of the Contractor. Owner is paying Contractor to administer this Contract, to supervise the Work and to ensure that the Work is not hindered by poor relationships between Contractor and its Subcontractors. Owner has found that a failure to promptly pay Subcontractors causes complaints to be registered with Owner, and requires Owner to devote unnecessary time, resources and personnel to such matters. The parties mutually agree that it would be difficult, if not impossible, for Owner to determine the amount of damage caused to it by such actions, and that the amount of liquidated damages noted above is a reasonable amount and not a penalty;
  - c. Find the Contractor is a not a “responsible bidder” as that term is used in Oregon Law;
  - d. Pay the Subcontractor who has not received proper payment directly; and
  - e. Terminate the Contract for Default as provided in Article 1.13M.1.

H. Final Payment:

1. The Contractor shall notify the Owner’s Representative in writing when it considers that all the Work required by the Contract Documents meets the requirements for Final Completion. The Notice must be more than an invoice that requests the balance of the Contract Amount. Instead, the Notice shall plainly call to the Owner’s attention the Contractor’s belief that all Work has been completed in accordance with the Contract Documents. Retainage does not have to be returned to the Contractor until the Owner’s Acceptance of the Work and approval by the City Auditor and the Chief Procurement Officer.
2. Within 30 Days of receipt of the Notice, the Owner’s Representative will carry out a Final Inspection and will take one of the following actions:
  - a. Determine the Work is complete and prepare and forward to the Contractor a Certificate of Completion to be signed by the Contractor.

- b. Determine that the Work is Substantially Complete and provide the Contractor with a Letter of Substantial Completion and a Punch List of items that remain to be corrected and completed.
- 1) The Contractor is required to proceed promptly to complete the Punch List of items remaining. If the Contractor fails to do so within 30 Days or such other time as may be allowed by the Owner's Representative, the Owner may terminate any further services of the Contractor under the Contract Documents, complete the items remaining to be completed or corrected with the Owner's own forces or by hiring another contractor to perform the Punch List work. Costs of performing the Punch List work shall be deducted from any payments otherwise due the Contractor. If Owner has hired an Architect or Engineer to assist it on the Project, the Contractor shall pay costs for the Architect or Engineer's services if more than one inspection of the work is required because remaining portions of the Work are incomplete.
  - 2) When the Contractor believes the Punch List items have been corrected and completed, the Contractor shall again notify the Owner's Representative that all the Work required by the Contract Documents is completed and the Owner's Representative will again take the actions referenced in 1.13.H.2.a or 1.13.H.2.b;
  - 3) If the Work is not complete despite the Contractor's Notice that the Punch List items are complete, and Owner has hired an Architect or Engineer to assist it on the Project, Contractor shall pay costs for the Architect or Engineer's services if more than two inspections of the Work are required because the Punch List remains incomplete.
  - 4) Upon Substantial Completion, the Owner will be responsible for utilities, insurance, security, maintenance and damage to work caused by Owner's agents and employees unless otherwise provided in the Letter of Substantial Completion. Contractor remains responsible for damage to work caused by its Subcontractors, agents and employees during the performance of Punch List work.
  - 5) Warranties for Products and services provided by the Contractor shall commence upon issuance of the Letter of Completion, unless otherwise provided by the Contract Documents or agreed to in writing by the Owner's Representative.
- c. Determine the Work is neither complete nor Substantially Complete and provide the Contractor with a Deficiency List of items that remain to be corrected and completed. When all such items have been



corrected and completed, the Contractor shall again notify the Owner's Representative that the Work is complete or Substantially Complete.

- d. In the event the Contractor does not notify the Owner, but the Owner determines the Work is complete or Substantially Complete, the Owner may, but is not required to, notify the Contractor of its determination. If so, the Owner will notify the Contractor and the Contractor shall proceed with either the completion of the Punch List items noted above or shall sign the Letter of Completion in the same manner and within the same time as that stated in Articles 1.15H.2.a or 1.15H.2.b.
3. If the Contractor disagrees with the Owner's conclusion that the Work has not met the requirements for Final Completion, the Contractor nevertheless shall perform the Work that the Owner believes is required by the Contract Documents. If the Contractor then believes that the performance of such Work entitles it to additional compensation, additional Contract Time, or both, it shall follow the requirements of Article 1.18A. After performing such Work, the Contractor shall then again provide the Notice required by Article 1.15H.1.
4. Following preparation of the Certificate of Completion, the Owner's Representative will send it to the Contractor for the Contractor's signature. After return of the Letter, the Owner's Representative will submit it, together with the estimate of the Final Payment due to the Contractor for Acceptance of the Work.
5. Invoices submitted by the Contractor to the Owner during the course of the Project are made to receive progress payments and are not binding on the Owner. In the event that any previous invoice is discovered to be inaccurate, any resulting overpayment or underpayment to the Contractor may be corrected in the next payment or the Final Payment. Corrections of overpayments or underpayments between the Contractor and any Subcontractor or supplier are the sole responsibility of the Contractor.
6. The Final Payment shall be the difference between the Contract Amount, as adjusted by any authorized Change Orders, and the sums of all payments previously made, the Contractor's portion of any Final Cost Savings, plus any Retainage and interest earned on Retainage held by the Owner.
  - a. The Owner may deduct against any progress payment, including the Final Payment, any amount previously paid to the Contractor in error or any other amount owed to the Owner for any reason resulting from the Contractor's work under the Contract Documents.

- b. If the Work under the Contract Document is designated as one for a Local Improvement District Project (LID), Retainage will not be released until the conclusion of the assessment hearings and the adoption of an assessment ordinance as provided in City Code.
  - c. If the Owner declares a default of the Contract and the Contractor's Surety fulfills its responsibility to ensure Final Completion, then the Contractor agrees that all progress payments not yet made and all Retainage including any interest earned on Retainage held by the Owner shall be paid to the Surety and not to the Contractor.
  - d. ORS 279C.845 requires the Contractor or Contractor's Surety and every Subcontractor or Subcontractor's Surety to file certified statements with the Owner in writing certifying various matters regarding the hourly rate of wage paid each worker and that no worker has been paid less than the prevailing rate of wage or less than the minimum hourly rate of wage specified in the Contract. If the Contractor fails to file these certified statements, the Owner is required by law to retain 25% of any amount earned by the Contractor until the Contractor has filed the statements. The Owner will follow the requirements of ORS 279C.845 as if fully set forth herein.
7. Acceptance of the Work will not occur until the Contractor provides the Notice referenced in Article 1.15H.1, signs and submits the Certificate of Completion referenced in Article 1.15H.2, signs and submits the Acknowledgement Form referenced in Article 1.15.H.8, submits the Warranty Bond referenced in Article 1.09T.7 and all other documents required by the Contract, the Owner's Representative presents a report recommending acceptance to the Owner and that report is approved. Thereafter, Final Payment will be made within 30 Days.
8. Upon Acceptance of the Work, and as a condition of Final Payment, the Contractor shall sign an Acknowledgement Form:
- a. Acknowledging payment of sums previously paid to the Contractor except for Final Payment; and
  - b. Releasing all monetary Claims against the Owner other than the receipt of Final Payment. However, if the Contractor has submitted a Claim to the Owner pursuant to Article 1.18A, the Contractor may state that a Claim has been submitted, and not yet resolved. If that occurs, no waiver of the Claims stated on the form will be deemed to have occurred. However, all Claims not specifically referenced on the form will be deemed to have been waived; and
  - c. Certifying that:

- 1) All amounts due for labor, materials and other obligations due to the Contractor's own workers, its Subcontractors and suppliers have been fully paid in accordance with Oregon law, Chapter 279C, except for amounts that might be due upon Final Payment or if a Claim submitted pursuant to Article 1.18A. that is specifically referenced on the form is later paid by the Owner in whole or in part; and
  - 2) If there are outstanding claims against the Contractor from any person, including the Owner, that are disputed by the Contractor that such claims are payable by its Performance and Payment Bond, its insurance carrier, or by the Contractor itself.
- d. At the conclusion of the Work, the Owner will provide the Contractor the Acknowledgement Form. If the Contractor fails to return the Acknowledgement Form, the Owner will send the Acknowledgement Form to the Contractor via certified mail. If the Contractor still fails to return the Acknowledgement form within 30 Days from the date of the mailing, such failure shall be deemed to serve as:
- 1) An acknowledgement that all payments are correct; and
  - 2) A waiver of any future right to claims in respect to the Contract, except for claims that have already been submitted by the Contractor pursuant to Article 1.18A.

I. Payment Requirements per Statute

1. The Contractor shall comply with ORS 279C.505 as follows:
  - a. Contractor shall make payment promptly, as due, to all persons supplying to the Contractor labor or Material for the performance of the Work provided for in the Contract subject to the requirements set forth in this section;
  - b. Contractor shall pay all contributions or amounts due the Industrial Accident Fund from the Contractor or subcontractor incurred in the performance of the Contract;
  - c. Not permit any lien or claim to be filed or prosecuted against the Owner on account of any labor or material furnished, and;
  - d. Pay to the Department of Revenue all sums withheld from employees under ORS 316.167.
2. The Contractor shall comply with ORS 279C.530 as follows:

- a. Contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of the Contractor, of all sums that the Contractor agrees to pay for the services and all moneys and sums that the Contractor collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services.
- b. All subject employers working under the Contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.
- 3. In addition to other actions the Owner may take under this Contract, pursuant to ORS 279C.515:
  - a. If the Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the Contractor or a Subcontractor by any person in connection with the Contract as such claim becomes due, the Owner may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the Contractor by reason of such contract.
  - b. The payment of a claim in the manner authorized by ORS 279C.515 shall not relieve the Contractor or the Contractor's surety from obligation with respect to any unpaid claims.
  - c. If the Contractor or a first-tier Subcontractor fails, neglects or refuses to make payment to a person furnishing labor or Materials in connection with the Contract within 30 days after receipt of payment from the Owner or Contractor, the Contractor or first-tier Subcontractor shall owe the person the amount due plus interest charges commencing at the end of the 10-day period that payment is due under ORS 279C.580(4) and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest charged to the Contractor or first-tier Subcontractor on the amount due shall equal three times the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district that includes Oregon on the date that is 30 days after the date when payment was received from the Owner or from the Contractor, but the rate of interest may not exceed 30 percent. The amount of interest may not be waived.
  - d. If the Contractor or Subcontractor fails, neglects or refuses to make payment to a person furnishing labor or Materials in connection with the Contract, the person may file a complaint with the Construction

Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580.

4. Pursuant to ORS 279C.580, the Contractor shall include in each of its subcontracts for Work or supplies for the Project, the following provisions:
  - a. A payment clause that obligates the Contractor to pay the Subcontractor for satisfactory performance under its subcontract within 10 days out of such amounts as are paid to the Contractor by the Owner under such Contract;
  - b. An interest penalty clause that obligates the Contractor to pay to the subcontractor an interest penalty on amounts due in the case of each payment not made in accordance with the payment clause included in the subcontract, for the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made, and computed at the rate specified in ORS279C.515 (2).

#### 1.16 PAYMENT FOR CHANGED OR EXTRA WORK

##### A. General:

1. Contract Amount or Contract Time may be adjusted if the Contractor performs Changed or Extra Work. Such adjustments to compensation will occur through a written Change Order. The Change Order may be the result of mutual agreement between the Owner and Contractor or, using the force account payment provisions found in Article 1.17.
2. Neither Contract Amount nor Contract Time is adjusted if the Contractor receives a Field Order.

##### B. Change Orders:

1. The only authorized method for increasing or decreasing the amount of compensation, increasing or decreasing the amount of Contract Time or changing the scope of Work to be performed is through the execution of a written Change Order. Change Orders must be executed before the Work is performed unless the Work has been authorized pursuant to a Construction Change Directive (CCD) or a fully executed Change Order Request (COR) signed by the Owner and the Contractor where the total amount for all Changed or Extra Work does not exceed 25% of the original Contract Amount (or other amount approved by Council) Compensation will not be paid until a Change Order is executed.

2. The Contractor's signature on the COR or Change Order signifies the Contractor's agreement that the additional or reduction in compensation stated on the COR or Change Order is the total amount of compensation due to the Contractor for all costs, whether labeled as direct, indirect, "impact" or otherwise, and that the total amount of additional or reduced Contract Time, if any, is the total amount of additional or reduced Contract Time resulting from the changed or Extra Work.
3. Compensation for Changed or Extra Work set forth in the COR shall be as specified in the Contract Documents.
4. When a COR is accepted by the Owner's Representative, the Owner and the Contractor have agreed to modify the Contract Amount and Contract Time, if necessary, as indicated on the COR by executing a Change Order. Once both the Contractor and Owner have agreed upon the COR, it shall represent an accord and satisfaction and neither may later assert that a different amount of costs or different amount of Contract Time should be included in a Change Order.
5. If the Contractor performs Changed or Extra Work and additional compensation is due, but the Contractor and Owner disagree about the amount of compensation that is due or any Contract Time that might be changed, the Owner may issue a Unilateral Change Order and may use Force Account basis to determine reasonable compensation to the Contractor. A Unilateral Change Order is not signed by the Contractor. This permits Owner to pay Contractor what the Owner believes is due, and does not prejudice the right of the Contractor to file a Claim pursuant to Article 1.18A. for additional compensation or Contract Time. However, if after evaluation of the Contractor's Claim and documentation the Owner believes that it paid an incorrect amount or granted an inappropriate amount of Contract Time, the Owner may readjust the unilateral Change Order, either for or against the Contractor as necessary.

C. Other Changes to Compensation:

No time and material work or Force Account Work shall occur without an Owner's Representative present and approving the Work. For Work performed on a time and Materials basis, Contractor shall monitor and ensure that accurate records are maintained.

1.17 PAYMENT FOR FORCE ACCOUNT WORK

A. General:

1. The Materials, Equipment, and labor rates set forth in this Article apply only to Force Account Work. These rates do not apply to any

other work performed under the Contract Documents, although may be used as a basis to determine reasonable compensation. The rates and Mark Ups listed acknowledge the Owner's Representative's authority to control and alter the Materials, Equipment, and labor used and to determine the time of execution of the Force Account Work.

2. To the extent Work is to be performed on Force Account basis, the Owner's Representative will record, on a daily basis, the Materials, Equipment, labor, and Special Services used for the Force Account Work during that Day. Records will be kept on approved forms. The Contractor and the Inspector shall sign the form daily to indicate agreement on the Materials, Equipment, labor, and Special Services used for the Force Account Work involved on that Day. The Daily record will include:
  - a. Materials actually used in the Work as directed by the Owner's Representative except those furnished and paid under rental rates for use of Equipment. See Article 1.17B.
  - b. Equipment that the Owner's Representative considers necessary to perform the Force Account Work. Equipment hours will be recorded to the nearest quarter hour. See Article 1.17C.
  - c. Labor, including Equipment operators and supervisors in direct charge of the specific operations while engaged directly on the Force Account Work. See Article 1.17D.
  - d. Special Services performed by a specialist, if the Owner's Representative and Contractor agree that the Contractor's or Subcontractor's forces cannot satisfactorily perform an item or service related to the Force Account Work.
3. The Contractor shall supply Owner with all documentation necessary to substantiate any claim for payment. Owner is not required to pay Contractor for any amount that is not supported by documentation sufficient to establish entitlement to payment.

**B. Materials:**

1. The Contractor will be paid for Materials actually used in the Force Account Work, except for those furnished and paid for under rental rates included with the use of Equipment. Payments will be at actual cost, including transportation costs to the Project Site, from the supplier to the purchaser, whether the purchaser is the Contractor, Subcontractor, or other forces. All costs are subject to the provisions of this entire Article.

2. If a commercial trade discount is offered or available to the purchaser, it shall be credited to the Owner, even though the discount may not have actually been taken. The Owner will not take any discounts for prompt or early payment, whether or not offered or taken.
3. If Materials cannot be obtained by direct purchase from and direct billing by the supplier, their cost shall be considered to be the price billed to the purchaser less commercial trade discounts, as determined by the Owner's Representative, but not more than the purchaser paid for the Material. No Mark Up other than actual handling costs will be permitted as an actual cost.
4. If Materials are obtained from a supply or source wholly or partly owned by the purchaser, the cost shall not exceed the price paid by the purchaser for similar Materials furnished from that source on contract items or the current wholesale price for the materials delivered to the Project Site, whichever is lower.

C. Equipment:

1. Equipment Payment: Equipment approved by the Owner's Representative to perform the Force Account Work will be eligible for payment at the established rates only during the hours it is operated or on standby as ordered by the Owner's Representative. Equipment hours will be recorded to the nearest quarter hour. Equipment approved for use by the Owner's Representative will be paid at the applicable rental rate provided in Rental Rate for Construction Equipment published by EquipmentWatch.
2. Equipment Billing Form: On the billing form for Equipment costs, list for each piece of Equipment and its attachments the information needed by the Owner's Representative to determine the proper rental rate from the Blue Book.
3. Rental Rate Formula:

- a. The Rental Rate Formula for Contractor Owned Equipment Without Operators: Rental Rates for equipment without operators will be paid on an hourly basis for the machine and for attachments according to the following formula:

$$\text{Hourly Rate} = \frac{(\text{Monthly Base Rate} \times \text{Rate Adjustment Factor})}{(176 \text{ Hours per month})} + \text{Hourly Operating Rate}$$

- b. The terms used above are defined below:
  - 1) Monthly Base Rate: The monthly base rate used above for the machine and for the attachments represents the major costs of



Equipment ownership, such as depreciation, interest, taxes, Contractor Furnished Insurance, storage, and major repairs.

- 2) Rate Adjustment Factor: The rate adjustment factor used above will be determined as per page iii of each Section of the Rental Rate Blue Books.
- 3) Hourly Operating Rate: The hourly operating rate used above for the machine and for attachments represents the major costs of Equipment operations, such as fuel and oil, lubrications, field repairs, tires, or ground engaging components, and expendable parts.
4. Attachments: Some attachments are considered “standard equipment” and are already included in the monthly base rate for the machine. That information can be obtained from the Blue Book publisher.
5. Limitations: The “Regional Adjustment Factor,” will not apply.
6. Multiple Attachments: If multiple attachments are included with the rental Equipment, only the attachment having the higher rental rate will be eligible for payment, provided that attachment has been approved by the Owner’s Representative as necessary to the Force Account Work.
7. Small Tool Rental: Rental will not be allowed for small tools that have a daily rate less than \$5 or for unlisted equipment that has a value of \$400 or less.
8. Equipment Condition: The above rates apply to approved Equipment in good working condition. Equipment not in good working condition, or larger than required to efficiently perform the work, may be rejected by the Owner’s Representative or accepted at reduced rates.
9. Moving Equipment: When necessary to obtain Equipment from sources beyond the Project Site exclusively for Force Account Work, the actual cost to transfer the equipment to its work site and return it to its original location will be allowed as an additional item of expense.
  - a. Move-in and move-out allowances will not be made for Equipment brought to the project for Force Account Work if the Equipment is also used on contract item or related Work. If the move-out destination is not to the original location, the payment for move-out will not exceed the payment for the move-in.
  - b. If the move is made by common carrier, the allowance will be the amount paid for the freight. If the Equipment is hauled with the

Contractor's own forces, rental will be allowed for the hauling unit plus the hauling unit operator's wage. If Equipment is transferred under its own power, the rental will be 75 percent of the appropriate hourly rate for the Equipment, without attachment, plus the Equipment operator's wage.

10. Standby Time

- a. If ordered by the Owner's Representative, standby time will be paid at 40 percent of the hourly rate established above, excluding the hourly operating rate. Rates for standby time that are calculated at less than \$1 per hour will not be paid. Payment will be limited to not more than 8 hours in a 24-hour period or 40 hours in a 1-week period.
- b. If a rate has not been established in the Blue Book, the Contractor may use the rate of the most similar model found in the Blue Book, considering such characteristics as manufacturer, capacity, horsepower, age, and fuel type if approved by the Owner's Representative; request the Blue Book publisher to furnish a written response for a rental rate on the Equipment, which shall be presented to the Owner's Representative for approval; or request the Owner's Representative to establish a rental rate.

11. Outside Rental Equipment:

- a. If Contractor or subcontractor-owned Equipment is not available, and Equipment is rented from outside sources, payment will be based on the actual paid invoice. If the invoice specifies that rental rate does not include fuel, lubricants, field repairs, and servicing, an amount equal to the Blue Book hourly operating cost may be added for those items which were excluded. The Owner is only obligated to pay the reasonable rental value of the Equipment, even if the actual cost to Contractor exceeds that amount. Therefore, Owner may reduce the payment when the invoice amount plus allowance is higher than the amount that would have resulted as specified in Articles 1.17C.2 through 1.17C.8.
- b. Equipment not approved by Owner for use in advance of performing the Work will be paid by using rates for the least expensive Equipment that will accomplish the work or utilizing the applicable Blue Book rates established above.
- c. Equipment having a value of \$400 or less will be considered to be tools or small equipment and no rental will be allowed on those items.

12. Outside Rental Equipment with Operator:

- a. The use of Equipment rented with operators will be permitted only if the following requirements are met:
  - 1) The Contractor has submitted a written request accurately describing the service to be provided, its estimated cost and the estimated duration. The request must be approved by the Owner's Representative before the service is provided.
  - 2) The service is limited to:
    - a) Truck hauling of Material; or
    - b) Performing minor, incidental, short duration work under the direct supervision of the Contractor or Subcontractor with equipment not normally owned, leased, or operated by the Contractor, or Equipment that is temporarily unavailable to the Contractor.
- b. In addition, the Contractor shall furnish the Owner's Representative with a copy of the rental agreement or purchase order covering the service provided. The Contractor shall make certain that the provider of the approved services submits payrolls as required by Law and complies with applicable contractor provisions. The service provider will not be considered as a subcontractor under this Contract. If at any time the Owner's Representative determines that the service provided by rented, operated Equipment is not minor, incidental, short duration work, any previous approval will be revoked, and the Contractor shall execute a subcontractor agreement with the service provider and then submit it for approval to the Owner's Representative. Failure to execute a subcontract in such situations will be cause for removal of the service provider from the Project.

D. Labor:

- 1. For all labor, including Equipment operators and supervisors in direct charge of the specific operations while engaged directly on Force Account Work, the Contractor will be paid:
  - a. The actual wages paid to laborers and supervisors, if those wages are paid at rates not more than those for comparable labor currently employed on the project, or at the recognized, current, prevailing rates in the locality of the project. The Owner has no duty to pay rates higher than those stated above.
  - b. The actual cost of industrial accident insurance and unemployment compensation contributions, payroll transit district taxes, and social security for old age assistance contributions incurred or required by under statutory Law and these Contract Documents. The actual cost

of industrial accident insurance is the National Council on Compensation Insurance (NCCI) rate for the assigned risk pool for the appropriate work class multiplied by the experience modification factor for the Contractor.

- c. The actual amount paid to, or on behalf of, workers by reasons of subsistence and travel allowances, health and welfare benefits, pension funds benefits, or other benefits when such amounts are required by collective bargaining agreement.
2. The Contractor shall provide the Owner with the names, identification, and classification of all workers, their hourly rate of pay, hours worked, and any other information requested by Owner to determine the proper amount of payment.

E. Subcontractor Mark Up:

1. To the actual costs given and limited above, amounts equal to a percentage of these costs will be allowed and paid to the Contractor as follows for that portion of the Force Account Work performed by the Subcontractor's own forces:

Article	Percent
1.15.B Material	10
1.15.C Equipment	0
1.15.D Labor	15
1.15.C.12 Outside Rental	5
1.15.A. Special Services	5

2. The Mark Ups shown in Article 1.17E.1 shall also apply to Force Account Work performed by a Subcontractor. When work is performed by a Subcontractor on a force account basis or other basis agreed to by the Owner's Representative, the Owner shall pay the CM/GC Fee to the Contractor. Regardless of the number of tiers of Subcontractors, Mark Ups provided in Article 1.17E.1 will be applied only one time.
3. When Changed or Extra Work includes both additions and reductions to the Work, the Mark Ups provided in Articles 1.17E.1 through 1.17E.2 shall apply to the net difference between the cost of the added Work and the estimated value of the deleted Work. However, when the cost of the added Work is less than the estimated value of the deleted Work, the allowances will not be applied.

4. When paid to the Contractor, the Mark Up permitted by Articles 1.17E.1, 1.17E.2, and 1.17E.3, will be complete compensation for all Force Account Work costs that were incurred by the Contractor or by other forces that the Contractor furnished. No other reimbursement, compensation, or payment will be made.

F. Billings:

1. Billings for Force Account Work by the Contractor shall be submitted for the Owner's Representative's approval on Owner provided forms or on a form approved by the Owner's Representative. Billings for Materials (other than incidental items out of the inventory of the Contractor or Subcontractors), outside rental equipment, and services, shall be accompanied by copies of invoices for the goods and services used on the Project. The invoices shall be fully itemized showing dates, quantities, Unit Prices, and complete description of goods and services. Invoices for amounts of \$10 or less per invoice are not required, unless requested by the Owner's Representative.
2. Contractor and Subcontractors shall take advantage of all practicable discounts on bills for Materials and supplies and such discounts shall be reflected on all bills and invoices submitted to Owner. Freight will be considered to be part of the cost of Materials and supplies and will be paid for as Materials and supplies. Materials and supplies will be paid for as agreed in writing prior to their production or use. If there is no prior agreement, the Owner's Representative shall establish a reasonable price for such Materials and supplies.
3. Costs billed shall not be greater than those permitted in Article 1.17.

1.18 DISAGREEMENTS, PROTESTS, AND CLAIMS

A. Claims Procedure:

1. This Article outlines the exclusive procedure to be followed if the Contractor believes that it is entitled to additional compensation, additional Contract Time or both. This Article applies to all Claims for additional compensation and all requests for additional Contract Time, regardless of whether the basis for the Claim for additional compensation, or request for additional Contract Time, or both, stems from the performance of Extra Work, Changed Work, excusable delays of any nature, suspension of Contract Work, or any other reason whatsoever.
2. When the Contractor believes it is entitled to be paid more than the Contract Amount, the Contractor shall provide Notice to the Owner's Representative in writing before beginning any Work for which additional compensation is sought. The written Notice shall include:

- a. A description of the event that requires additional compensation;
  - b. The estimated amount of the additional cost to the Owner; and
  - c. Any Contract provision(s) that support the Claim.
3. When an event occurs that the Contractor believes entitles it to more time to complete the Work than Contract Time permits, the Contractor shall provide Notice to the Owner's Representative in writing when the event occurs. The written Notice shall include:
    - a. A description of the event that permits additional Contract Time;
    - b. An estimate of the delay that the event will cause; and
    - c. Any Contract provision(s) that support the request for additional Contract Time.
    - d. The estimated time to complete the Work for which additional Contract Time is sought and the estimated date for submission of the Claims Package described and subject to the timeframe set forth in 7 below.
  4. If the Contractor does not provide written Notice of a Claim for additional compensation or additional Contract Time in accordance with Articles 1.18A.2 and 1.18A.3 as applicable, the Claim for additional compensation, additional Contract Time, or both, is waived.
  5. If the Owner agrees with the Contractor's request for additional compensation or Contract Time the parties shall negotiate a Change Order setting forth their agreement. If the Owner disagrees, the Contractor shall do the following:
    - a. Continue promptly with the Work, including any Extra or Changed Work required by the Owner so the Project is not delayed;
    - b. Keep complete records of its costs in the manner set forth by the Force Account Work provisions of this Contract Documents or a Change Order Request, as applicable. The Owner also may elect to keep such records to eliminate later confusion. The keeping of such records by either Contractor or Owner does not mean that any Claim is valid;
    - c. Submit documentation supporting the request for additional compensation, additional time or both, as required in Article 1.18A.6 and 1.18A.7.
  6. The Contractor's request for additional compensation shall be supported by a Claims Package that includes a) all documentation that establishes its right to additional compensation and b) all

documentation substantiating the amount of additional compensation to which it is entitled. The documentation shall include the cost records required by Article 1.18A.5 and all other relevant documentation, such as payroll records, purchase orders, quotations, invoices, estimates, profit and loss statements, daily logs, ledgers and journals.

- a. The Claims Package shall be submitted within 45 Days following completion of any Work for which a Claim of additional compensation has been made. The Contractor shall provide additional documentation to support its request within 30 Days if requested to do so by the Owner.
  - b. If the Contractor contends that it will incur costs beyond the 45 Day time period that should be included in the Claim, the Contractor shall notify the Owner's Representative of this fact in writing and provide an estimate of that cost. Thereafter the Contractor shall provide the Owner with additional documentation when the remainder of its additional costs is known.
  - c. The Owner will rely on the accuracy of the Claims Package to make decisions regarding future expenditures. Failure to submit the Claims Package within 45 Days is a conclusive waiver of the Contractor's right to additional compensation.
  - d. The Owner may request additional documentation from the Contractor at any time regarding a Claim. Failure to provide additional documentation by such deadline and when such documentation exists constitutes a waiver of that portion of the Contractor's Claim to which the additional documentation relates.
7. Any request for additional Contract Time shall be supported by documentation that includes a) a description of the event on which the request is based, and b) all information, including a schedule analysis, that shows that the event delayed completion of the Project as a whole.
    - a. The Contractor shall submit the documentation within 45 Days following the completion of the event that caused the delay and for which additional Contract Time is sought.
    - b. The Contractor shall provide additional documentation to support its request within 30 Days if requested to do so by the Owner. Failure to provide that information is a conclusive waiver of that portion of the Contractor's request to which the additional documentation relates.
  8. Following receipt of all required documentation, and after the Owner's Representative has had sufficient period of time to review it in light of

work responsibilities, the Owner's Representative and the Contractor's Project Manager shall meet to attempt to resolve the matter if either requests it. If Owner determines that the Contractor has not provided required documentation, the Owner may still meet with Contractor to discuss any claim without waiver of the Owner's right to later assert that the Contractor's Claim has been waived for failure to submit documentation.

- a. If the Claim cannot be resolved, it shall be referred to persons with higher authority on the part of the Contractor and the Owner, who also shall have the authority to resolve the dispute. Those persons shall meet for negotiations at a mutually agreed upon time and place after having had a sufficient time to review the Claim.
- b. If the Claim is not resolved after this meeting, the Contractor and Owner agree that the matter will be submitted to mediation. The mediator shall be chosen by mutual agreement. If a mediator cannot be agreed upon the Contractor and Owner agree to present the Claim to a mediator selected by the Presiding Judge of Multnomah County, Oregon. The mediation fee shall be borne equally by the Owner and Contractor.
- c. If the matter is not resolved by mediation, the Owner and Contractor may mutually agree to resolve the dispute by arbitration. The Owner and Contractor may mutually agree to any arbitration method. In the event that no agreement is reached as to the method of arbitration, the arbitration shall be as set forth in accordance with the Large, Complex Construction Cases procedures of the American Arbitration Association's (AAA) panels of arbitrators for Large, Complex Construction Cases. The Contractor shall pay the arbitration fee required to initiate the arbitration under AAA.
  - 1) The Contractor and Owner shall agree upon the appointment of an arbitrator. In the event of disagreement, each party shall appoint one arbitrator within 30 Calendar Days of the disagreement. Those two arbitrators will appoint a third arbitrator to act as the presiding arbitrator.
  - 2) The decision of the arbitration panel shall be final, binding and conclusive upon the parties and subject to appeal only on those grounds for which arbitrations in Oregon are subject to appeal and may be confirmed or embodied in an order or judgment of any court having jurisdiction. The arbitrators appointed pursuant to this Agreement shall not have the power to award punitive damages or attorney fees and shall not have the power to rescind this agreement.



- d. If the matter is not arbitrated and the dispute remains unresolved, either party may pursue resolution through litigation in accordance with the requirements of these Contract Documents.
- e. The procedures specified in Article 1.18A.8 shall be the sole and exclusive procedures for the resolution for disputes between the Owner and Contractor arising out of or relating to this agreement, except that either may seek preliminary judicial relief or an injunction to avoid irreparable damage. Despite any injunctive relief, the procedures specified in this Contract for the resolution of Claims shall remain applicable.
  - 1) The Owner is not obligated under the Contract to provide additional Contract Time or additional Compensation unless documentation submitted by the Contractor establishes its entitlement to additional compensation, additional Contract Time, or both. The parties agree that it is not a breach of contract to deny a request for additional compensation or request for additional Contract Time if the Contractor fails to submit adequate documentation substantiating its Claim or request for time.
  - 2) If the Contractor is entitled to additional compensation, the Contractor shall receive compensation based on the Force Account Work provisions of Article 1.15.

B. Litigation:

- 1. Any legal proceeding, of any nature whatsoever, brought by the Contractor against the Owner, that asserts a breach of Contract, a claim of quantum merit, a declaratory judgment proceeding, or any other legal or equitable claim related to, or arising, from work performed pursuant to the Contract Documents, shall be brought within 1 year of the date that Final Payment is made to the Contractor, regardless of whether the Contractor is aware of the legal claim it might have during that time. If the legal proceeding is not brought within that 1-year period, the Contractor expressly waives any and all claims that are in any way related to the Contract.
- 2. For purposes of this Article payment is considered made when the City of Portland sends a check to the Contractor that contains the Final Payment. The subsequent payment of minor amounts to the Contractor that constitute less than 2 percent of the total Contract Amount, or the payment of Claims made pursuant to Article 1.18A, shall not affect the date when Final Payment is considered to have been made.

3. The Contractor agrees that any legal proceeding initiated by the Contractor shall be brought only in the Circuit Court of Multnomah County, Oregon.
4. The Contractor agrees that, as a result of its willingness to do business with the City of Portland, the Contractor shall resolve any dispute with the Owner in Multnomah County, Oregon. All discovery between the parties undertaken pursuant to federal, state, or local rules shall be conducted within that county, including, but not limited to, the production of documents and the appearance of expert and lay witnesses for deposition, if such depositions are permitted by court rules.
5. In the event of a dispute, the Contractor and the Owner agree to bear the cost of producing their own employees for deposition in Multnomah County, including but not limited to travel costs, per diem expenses and the cost of employee time. The parties further agree that if court rules or the court itself permits the deposition of expert witnesses, the party seeking the testimony of the expert witness will bear that witness' reasonable costs of travel, reasonable preparation costs and costs for time while in transit.
6. If litigation has commenced or is expected, the Contractor and its representative, including but not limited to the Contractor's attorneys, agree to make any requests for documents, including Public Records Requests, through the City Attorney's Office of the City of Portland.

## **PART 2 - PRODUCTS (NOT USED)**

## **PART 3 - EXECUTION (NOT USED)**

### **ATTACHMENTS**

#### **EXHIBIT J – PROJECT SITE**

#### **VOLUME 1A -**

#### **VOLUME 1 B**

#### **VOLUME 1C**

**END OF SECTION**

